(31)

2 March, 1988

Interim Report of the Securities Commission on aspects of a proposal for a merger of Lion Corporation Limited and L.D. Nathan & Co. Limited

1. Introduction

1.1 On 5 February 1988, the Chairman of Lion Corporation Limited (which we will refer to as "Lion") and the Chairman of L.D. Nathan & Co. Limited (which we will refer to as "Nathan") made a public announcement to the Stock Exchange that the Boards of the two companies had agreed to a merger. The announcement included the following:-

> "In order to achieve the merger, Lion today agreed to acquire a Fay Richwhite & Company Limited associate company, Wilshire Investments (1986) Limited, which controls about 38.2 million equivalent ordinary shares (35%) of Nathan. The sale is for cash, and the consideration equates to approximately $9.20 per Nathan ordinary share ... This agreement is conditional upon the merger proceeding ... The merger will be implemented by Lion offering the remaining shareholders of Nathan one Lion ordinary share for each ordinary Nathan share ..."

1.2 Immediately before the announcement, Lion shares were trading on the Stock Exchange at $6.05 per share, and Nathan shares at $5.80 per share. The consideration payable in cash to the shareholders of Wilshire Investments (1986) Limited (which we will refer to as "Wilshire") when related to each Nathan share said to be controlled by Wilshire, was about 1½ times the market value of the consideration proposed for each other share in Nathan. In the falling market the disparity has become greater. Moreover, the consideration proposed for the Wilshire shareholders bears interest from 1 January 1988 at 18% per annum. That was not mentioned in the announcement. The scale of the matter is indicated by noting that the cash payable by Lion to the Wilshire shareholders if the transactions proceed to completion will exceed $360 million and interest.

1.3 On 9 February 1988, the Chairman of the Commission requested Mr N.E. Gray, solicitor for Lion, to meet him to discuss aspects of the agreement between Lion and Wilshire. The Chairman requested an undertaking, which was later given in writing, that Lion would not settle or complete the acquisition of the shares mentioned in that agreement without giving the Commission at least 48 hours prior notice in writing.

1.4 On 10 February 1988, the Commission settled terms of reference for an enquiry, a copy of which is annexed as Attachment A.

1.5 Pursuant to section 18, Securities Act 1978, the Commission issued witness summonses to:-

Lion
Nathan
Wilshire
Fay Richwhite & Company Limited
(which we refer to as "FR") and
Mr A.D. Myers, Managing Director of Lion,

to attend before the Commission on Friday, 19 February 1988, and produce documents relevant to the terms of reference.

1.6 On Friday, 19 February 1988, the Commission, consisting of Mr C.I. Patterson, Chairman, Mr P.D. McKenzie and Mr B.H. Smith, opened the enquiry. Counsel appeared as follows:-

Mr L.W. Brown Q.C. and Mr B. Travis, for Lion

Mr John King, for Nathan

Mr J.C. Farmer Q.C. for FR

Mr D. Williams, Q.C. and Mr J.O. Lusk, for Mr A.D. Myers

Mr Bruce Bornholdt appeared as counsel assisting the Commission.

Mr W.M. Wilson and Mr M.N. Berry appeared for two directors of Lion, and for Malayan Breweries Limited and Fraser & Neave Limited, two shareholders in Lion, which sought leave to be parties to the enquiry. Leave was granted.

The Registrar of Companies, Mr K. McCormack, and the Executive Director of the New Zealand Stock Exchange, Mr Roger Gill, attended by invitation.

1.7 The meeting continued during the following week in public and private sessions, and concluded late on Friday, 26 February. The Commission took evidence from the parties mentioned in paragraph 5 in the form of documents and oral testimony. The witnesses were:-

David McKellar Richwhite, a principal of FR

Arthur Douglas Myers, Managing Director of Lion

Keith Vincent Coe, Chairman of Directors of Nathan

Philip Michael Smith, Financial Director of Lion

1.8 As the matter developed, the Commission considered it necessary to obtain evidence from other persons. Documentary evidence was obtained from 9 financial institutions. Oral testimony with further documentary evidence was taken from:

Christopher Robert Mace, a Director of Nathan

Peter Charles Cooper, a Director of Nathan

Michael Fam, a Director of Lion

John Cronin, an Alternate Director of Lion

Robin Lance Congreve, a Director of Nathan

Geoffrey Thomas Ricketts, Deputy Chairman of Nathan

Mr. G.P. Curry appeared as counsel for Messrs Mace, Cooper, Congreve and Ricketts.

2. The Takeover Code

2.1 The Takeover Code of the New Zealand Stock Exchange contains the following:-

"612 All holders of the same class of security shall be treated similarly by the offeror except that allotments of less than a marketable parcel of shares may be satisfied by cash. The amount shall be stated in the offer documents.

"613 (1) If, after a takeover or merger transaction is reasonably in contemplation, an offer has been made to, or shares have been purchased from, one or more shareholders of an offeree company any subsequent general offer made by or on behalf of the same offeror, or any person acting in concert with it, within 3 months of such prior offer or acquisitions, to the remaining holders of the same class of security shall not be on less favourable terms."

2.2 The Code is part of a contract between the Exchange and each listed company - New Zealand Stock Exchange v. Listed Companies Association Inc. [1984] 1 N.Z.L.R. 699 (C.A.). Both Lion and Nathan are respectively parties to such contracts with the Exchange.

2.3 By letter dated 11 February 1988, Nathan, through its solicitors, requested the Exchange to waive the

provisions of Requirement 613 if the Exchange considered the Requirement had been breached. By letter dated 12 February 1988, Lion, through its solicitors, made a similar request. Both letters contained assertions of fact and expressions of opinion. The Exchange has these requests under consideration.

3. The Commission's Functions

3.1 The Commission has undertaken this enquiry pursuant to section 10, Securities Act 1978, which includes amongst the functions of the Commission:-

"....

(b) To keep under review the law relating to bodies corporate, securities, and unincorporated issuers of securities, and to recommend to the Minister any changes thereto that it considers necessary; and

(c) To keep under review practices relating to securities, and to comment thereon to any appropriate body; and

(d) To promote public understanding of the law and practice relating to securities."

Apart from the powers to take evidence, report and comment, the Commission has no powers in cases such as this - City Realties Ltd. v. Securities Commission [1982] 1 N.Z.L.R. 74 (C.A.). In that case the Court of Appeal held that the Commission has power to investigate in depth a particular company takeover or attempted takeover, may exercise that power while the attempt is in progress, and may comment, depending on the circumstances, to appropriate bodies such as the Stock Exchange, professional societies, "the directors of a particular company, [or] the shareholders of a particular company as a whole", (p.79). Section 28A of the Act authorises the Commission to publish any report or comment made in the course of the exercise or the intended exercise of its functions, except a report to the Minister of Justice recommending a change of the law.

3.2 The main purpose of the enquiry is to examine the application in practice of the equal treatment principle that underlies the requirements quoted in para. 2.1, and the question whether any change to those requirements should be made. However, counsel for all parties agreed in submitting that the proceedings should be severed into two parts. The first part, so it was submitted, should be confined to paragraphs 1 and 2 of the terms of reference, and should be undertaken and completed as a matter of extreme urgency. The second part, so it was also unanimously submitted by counsel, should comprise

the "law reform" aspects and be deferred for more leisurely consideration.

3.3 The sincerity of counsels' request for urgency was demonstrated by their willingness (and that of the parties and witnesses) to attend at short notice, to disrupt prior engagements, and to sit for extended hours while evidence was taken.

3.4 The request for urgency was fortified by a request from the Stock Exchange, by letter to the Commission dated 23 February 1988 in which the Exchange expressed the hope that six matters of fact "of a market information nature" would be examined and disclosed. Those matters were:-

"(1) The full details of the price (including interest content) at which Fay Richwhite is prepared to sell its holding to Lion.

"(2) Which party was the beneficial owner of the 'Fay Richwhite' holding.

"(3) The existence of the $20 million advance to Fay Richwhite and the put option/underwriting agreement against the Cooper/Mace investment company.

"(4) The reasons why Mr A.D. Myers stood as guarantor for both the $20 million advance and the put option/underwriting agreement.

"(5) Details of the basic terms and conditions of the put option held by Fay Richwhite against the various parties who guaranteed it - (The disclosure of the exercise price may be a matter needing confidentiality until Fay Richwhite conclude a binding agreement to sell).

"(6) We would also appreciate details of the 'pre-emptive' agreement between Fay Richwhite and L.D. Nathans."

3.5 The Commission has given consideration to the facts:-

(a) That the applications to the Exchange for waiver mentioned in paragraph 2.3 are pending, and

(b) That an Extraordinary General Meeting of the members of Lion will be held on Tuesday, 8 March, at 9.30 a.m. in Auckland for the purpose of considering a proposal for an ordinary resolution to approve the proposals for the merger and to authorise the issue and allotment of the Lion shares requisite to complete the merger.

3.6 The applications to the Exchange are said to invoke a power of the Exchange in relation to the Listing Requirements found in the contracts with listed companies or in the law applicable to such contracts. Accordingly, as a tentative view, it seemed to be inappropriate for the Commission to express its opinion about the manner in which the Exchange, as one party to a contract, should exercise a power of waiver which might be vested in it. All counsel submitted that the Commission should adopt that view in this particular case. The Exchange said that, as the body responsible for granting waivers from its Listing Requirements, it should be left to determine the applications without prior comment from the Commission as to the manner in which such a power should be exercised. We accept that view in this case, and will refrain from comment on the waiver question (except in one respect mentioned in paragraph 3.7) until the decision of the Exchange has been made.

3.7 The exception is this. The Commission desires to draw the attention of the Exchange to the fact that this is not a case in which different considerations (for identical shares in a listed company) thought to be more or less equivalent in value when a merger or takeover proposal was formulated have become substantially disparate by reason of subsequent price movements in the market. In this case, substantially unequal considerations for identical shares were proposed from the beginning.

3.8 There have been conflicting assertions of fact and vehement expressions of different opinions. We pass over the expressions of opinion, but we have decided to express our view of certain matters of fact, including the six matters raised by the Exchange as mentioned in paragraph 3.4. We do this because it is evident that there is uncertainty in the marketplace, amongst some of the directors and shareholders of the companies concerned, and in the Exchange about information that may be relevant to their respective decisions. Accordingly, we invited counsel to include in their submissions to us submissions on the six matters. All have done so.

3.9 The Commission has therefore given urgent attention to paragraphs 1 and 2 of its terms of reference, and has decided to publish this interim report.

4. Shareholdings in Nathan

4.1 The paid up share capital of Nathan consists of $56 million divided into:

- 101 million ordinary shares of 50¢ par value fully paid
- 162,000 specified preference shares of $1.50 par value fully paid

- 2 million specified preference shares of $2.50 par value fully paid

The figures have been rounded.

4.2 As at 19 February 1988, the parties before the Commission said they controlled the following beneficial holdings in Nathan (expressed as a percentage of the ordinary shares):-

FR	30.25%
Messrs Fay and Richwhite personally and jointly	5.44%
Lion	1%
A.D. Myers	1%
C. Mace	12.5%
P. Cooper	12%
Wilshire	Nil
Campbell & Ehrenfried Investments Limited	Nil
Witnesses' holdings aggregate	62.19%

The other shares in Nathan are dispersed amongst members of the public.

4.3 Having regard to the terms of the announcement quoted in paragraph 1.1, it is to be especially noted that Wilshire presently controls no Nathan shares. The evidence indicates that FR and Messrs Fay and Richwhite intend to sell their holdings to Wilshire.

4.4 The evidence also indicates that FR and Messrs Fay and Richwhite have entered into at least four sets of agreements or arrangements with respect to their holdings in Nathan (apart from funding contracts with financiers) that may affect the disposition of their holdings or parts of them. As the main sources of controversy amongst the parties to this enquiry concern those agreements or arrangements, we examine the evidence about them next.

5. The Fay Richwhite Holdings in Nathan

5.1 FR has acted from time to time as merchant bankers for Nathan. The relationship is cemented by personal associations. Mr Richwhite said he knows the Chairman of Nathan, Mr Coe, very well, and that other things being equal, he would wish to please Nathan in his business decisions. His evidence made it plain that he and Nathan regarded FR as an appropriate "white knight" in any takeover contest for Nathan.

> "[Nathan] did not want some corporate raider coming in there who had aspirations, perhaps, to asset

strip the company. So the rationale that was always told to me was that if someone was going to secure a majority stake in the company, or a significant stake, then the [Nathan] board was concerned that .... the ambitions of that shareholder were in the best interests of the company."

Mr Richwhite gave this evidence to set the background of the FR acquisitions of Nathan shares and the rights FR conferred upon Nathan respecting the holding.

5.2 FR has also acted as merchant bankers for Lion. Mr Richwhite said that he has known Mr Myers, Lion's Managing Director, for some years, and that the families have close friendships.

5.3 These personal associations are well known, and have no doubt given rise to the strong suspicions that have fomented the differences amongst the parties to this enquiry. We draw no strong inferences from them. We are satisfied from the evidence that Mr Richwhite retained his independence of decision, especially in matters affecting his own self interests, subject only to the commitments we are about to mention. Neither he, nor FR, acted as nominee for any other person in relation to the ownership of the shares in Nathan. In particular, the shares mentioned in paragraph 4.2 as the holdings of FR and Messrs Fay and Richwhite belonged to them as beneficial owners.

5.4 In July 1986, Nathan asked FR to assist in negotiations for the disposal by Woolworths Limited of Australia of Woolworths holdings in Nathan. FR agreed, with Nathan's approval, to buy part of the holding. This was implemented under an agreement dated 30 July 1986 (produced to the Commission) whereby the shares in a Woolworths subsidiary which held the Nathans shares were sold to a subsidiary of FR as nominees for Messrs Fay and Richwhite personally.

5.5 In November 1986 Nathan advised FR that Rangatira Limited might wish to sell its holding in Nathan. FR negotiated with Rangatira, with the result that FR bought the parcel in December 1986.

5.6 On 3 December 1986 Nathan wrote a letter to FR recording the "understandings and arrangements" regarding the Nathan shares mentioned in paragraphs 5.4 and 5.5. The letter is reproduced, except for deletions to preserve confidence, as attachment B.

5.7 In March 1987 Nathan and FR agreed on the terms of a placement of a new issue of Nathan shares whereby FR was allotted a parcel of Nathan shares for cash at a premium. It was agreed that the restraints relating to the earlier acquisitions (attachment B) would apply to the shares in the placement.

5.8 On 30 April 1987 FR purchased a parcel of Nathan shares from Messrs Mace and Cooper, directors of Nathan, at the same price as the placement price.

5.9 In June 1987 FR, through a subsidiary, "stood in the market" for 10% of Nathan shares. Before doing so, FR discussed their intention with Nathan and found no objection. FR said they wished to increase their holding to an "equity accounting position". We have some difficulty with this explanation from a merchant bank, because equity accounting is prohibited in prospectuses for debt securities (Securities Regulations 1983, Second Schedule, clause 32). We think FR had decided that Nathan was a potentially profitable investment and wanted more of it. There is nothing wrong in that, unless FR had confidential price-sensitive information from Nathan. We have no evidence that, at that time (June 1987) FR had any such information.

5.10 On 30 June 1987 a subsidiary of FR, called Thor, and a person who is not a party or witness before this enquiry (we will call him "the owner") entered into a contract in writing relating to a parcel of Nathan shares. A copy of the contract, subject to deletions to respect confidence, is reproduced as attachment C. The owner gave to Thor the option to buy the shares exercisable within the period from 1 October 1987 to 30 October 1987 (a "call option"). Thor gave the owner the option to require Thor to buy the same shares exercisable within the same period (a "put option"). The same price was fixed for both options. It had been determined as at 5 June 1987, and carried interest from that date, but there were escalation clauses -

(i) obliging Thor to increase the price to equate any price agreed by Thor with anyone else for the purchase of Nathan shares during the period from 5 June 1987 to the date two days after the exercise of either option, and

(ii) obliging Thor, if Thor should on-sell the shares within the same period at a price exceeding the fixed price, to pay to the owner half the excess.

Thor acquired the parcel in October 1987. We see no reason to doubt Mr Richwhite's evidence that Thor holds the shares as nominee for FR, the beneficial owner.

5.11 On 12 January 1988, Campbell & Ehrenfried Investments Limited (which we will refer to as " C. & E.") then owned by Messrs Mace and Cooper, requested FR to purchase C. & E.'s holdings in Nathan. The request was made by letter reproduced as attachment D. We were told that FR agreed to those terms, and is entitled to the shares accordingly, although it has not paid for them. Messrs Cooper and Mace told us that the arrangements recorded in the letter were agreed before Christmas 1987.

5.12 The foregoing summary outlines the facts and circumstances regarding the acquisition by FR and its principals of the holding of about 35% of Nathan. We turn now to the evidence about the dispositions of that holding.

6. FR's agreements for the disposal of the Nathan holding

The evidence produced to us indicates that at various times FR and its principals had entered into agreements or arrangements relating to their Nathan shares (or part of them) with, respectively

- Nathan,
- Messrs Mace and Cooper,
- C. & E. and certain guarantors,
- Lion.

7. FR's agreements with Nathan

7.1 The existence of agreements or arrangements by FR and its principals with Nathan is established by documentary evidence including attachment B. We had some doubt about the parcels to which the agreement applies, but in oral evidence Mr Richwhite said that the agreement could be regarded as applying to the entire holdings in spirit if not in express terms. Certainly four parcels, referred to in evidence as parcels 2, 3, 4 and 5, aggregating about 13 million shares, are subject to express undertakings in terms of attachment B.

7.2 The undertakings conferred upon Nathan the right to express written notice from FR of a decision to sell at a price fixed by FR and stated in the notice. Nathan then had 45 days to find a buyer at that price. If Nathan found such a buyer, FR was obliged to sell to that buyer. If Nathan did not find such a buyer, FR was then at liberty to sell the shares within a period of three months after the expiry of the 45 days, at a price not less than the price stated in the notice. If FR did not find a buyer at that price within the three months, it was not at liberty to sell the shares without first giving a further notice to Nathan stating the price, and the procedure would apply again.

7.3 The reason for these undertakings was explained to us by Mr Richwhite in evidence including the passage we have quoted in paragraph 5.1. The Nathan Board regarded FR as a "white knight", whose support was expected in the event of a takeover bid unwelcome to the Board.

7.4 These undertakings are still in force.

8. FR's agreements with Mace and Cooper

8.1 Both Messrs Mace and Cooper and Mr Richwhite gave oral evidence to the effect that there was an understanding between them that the FR holdings would not be sold before Mace and Cooper had an opportunity to buy or find a buyer.

8.2 Messrs Mace and Cooper both acknowledged that the undertakings to Nathan mentioned in paragraph 7 must take precedence over any understanding between them. As they are directors of Nathan, that was an appropriate concession. It is consistent with Nathan's rights in respect of the entire FR holdings.

8.3 Whatever the position between FR and Mace and Cooper may have been earlier, we think Mr Mace's letter of 12 January 1988 (attachment D) disposed of any commitment there may have been by FR to Messrs Mace and Cooper personally. The letter appears to us to proceed on the basis that FR could negotiate a sale to any "third party compatible with the interests of <u>Nathan</u>" [our emphasis]. As directors of Nathan, both gentlemen would be aware of the undertakings to Nathan mentioned in paragaph 7.

8.4 Accordingly, we conclude that as at 12 January 1988 Messrs Mace and Cooper had no legally enforceable hold over the disposition of the FR holdings in Nathan. Earlier, any oral understanding would have been subject to the FR undertakings to Nathan.

9. FR's arrangements with C. & E.

9.1 C. & E. was at one time controlled by Mr Myers, but he disposed of his interest in the company on 17 December 1987. Since that date C. & E. has been owned and controlled by Messrs Mace and Cooper. We are satisfied that since 17 December 1987 Mr Myers had no interest in or concerning C. & E. except the following.

9.2 On 22 December 1987 FR and C. & E. entered into a contract in the terms reproduced as attachment E. (We have made deletions of information given to us in confidence.) That agreement is supported by a guarantee in the terms reproduced as attachment F. Mr Myers is one of the guarantors.

9.3 The contract is entitled "Agreement conferring option to purchase shares in L.D. Nathan & Co. Limited". Such language usually indicates the conferring of rights of purchase on a potential purchaser. The text, however, is otherwise. The operative clause - clause 2.1 - gives FR "an option to require C. & E. to purchase the shares". Counsel variously described the contract as an "option to sell", a "put option", and an "underwriting contract".

9.4 There is no provision in the contract regarding the undertakings FR had given to Nathan that are described in paragraph 7. It interested us to note by way of comparison that a provision to preserve Nathan's rights, unless waived, was included in the other form of option produced to us (attachment C, clause 15.1).

9.5 Counsel for FR, C. & E. and the guarantors all presented their cases to us on the basis that the contract did not commit FR to dispose of any Nathan shares. Read literally, it appears plain that FR may choose, at its unfettered discretion, whether or not to give notice in accordance with clause 2.2. In the absence of such a notice - and none has been given - the contract appears to confer no rights on C. & E. Perhaps this explains the absence of any provision to recognise the undertakings FR had given to Nathan.

9.6 The deed of guarantee confers contingent interests in FR's Nathan shares upon the guarantors jointly and severally. Mr Myers, a director of Lion, is one of them. Messrs Mace and Cooper, directors of C. & E. and of Nathan, are also joined. Messrs Congreve and Ricketts, directors of Nathan (and of a company that has financed most of the FR purchases of Nathan shares) have also undertaken personal liability as guarantors. We asked these gentlemen to explain why they undertook these personal liabilities. We were told that they were willing to take the personal risks for the benefit of the companies they serve.

9.7 Perhaps we should explain how the guarantors, including Mr Myers, have contingent interests in FR's Nathan shares. When a guarantor satisfies an obligation he has guaranteed, he is entitled to "stand in the shoes" of the person to whom he gave the guarantee. By a process of law known as "subrogation", the guarantor who pays succeeds to all the rights of the person to whom the guarantee was given (unless the documents provide otherwise). Accordingly, the guarantors faced the possibility that if FR should exercise the put option, and if C. & E. did not perform the resulting contract, then the guarantors jointly and severally would become liable to pay the contract price to FR, and would, after payment, be entitled to the shares. Such was the contingent interest which Mr Myers and the other guarantors had in the FR holding.

9.8 After the contract and guarantee had been executed, Mr Richwhite asked C. & E. to make a payment of $100 million to FR. There is no written record of this request, but both Mace and Cooper confirmed that the request was made in discussions. After debate on more than one day, C. & E. agreed to pay $20 million to FR, and transmitted the money with a letter dated 24 December, a copy of which is reproduced as attachment G. C. & E. raised this money from its bankers by way of loan personally guaranteed by

Mr Myers. Mr Myers said that he gave this guarantee because he believed that there was a risk that the FR holdings in Nathan might be sold elsewhere unless FR was put in funds immediately.

9.9 Attachment G describes the payment as "in part settlement of [C. & E.'s] obligations under this option agreement". In fact, there were no such obligations expressed in the agreement (attachment E). However, clause 4.10 of the agreement expresses a right in C. & E. to offset monies owing by FR to C. & E. against the purchase price which would become payable if FR chose to exercise its rights to put the shares.

9.10 We conclude that C. & E. (and the guarantors) have not at any time had, and do not at present have, any presently enforceable rights to acquire any of the shares in Nathan held by FR and Messrs Fay and Richwhite.

10. FR's contract with Lion

10.1 On 5 February 1988, FR and Lion entered into a contract in the terms reproduced as attachment H. There is nothing confidential in this document, so it is reproduced in full. The contract includes certain conditions, and attention is directed to clause 6.

10.2 The substance of this contract is that subject to the conditions, FR agreed to sell and Lion agreed to buy the shares in Wilshire which, on settlement, would own the parcels of Nathan shares described in the Second Schedule to the contract. The means by which Wilshire would obtain those shares are not specified in the contract. The circumstances show that the shares are to consist of the holdings of FR, Fay and Richwhite personally, and the shares referred to in attachment D.

10.3 The contract falls within both paragraphs 1 and 2 of our terms of reference, being a disposition by FR and an acquisition by Lion of an interest in Nathan shares. We have had the advantage of examining evidence about the creation of this contract tendered to us by both parties to it.

10.4 The Lion Board was not unanimously in favour of entering into this contract. At one time we thought that the views of the dissentients had not been fully considered, and we have enquired closely into the dissentients' allegations. On the evidence obtained by us, we are satisfied that we have received full disclosure from Lion and Mr Myers. At our direction, these disclosures have been communicated to Mr Wilson, counsel for the dissenting directors, and to the dissenting directors. We believe that these disclosures have settled a number of questions they had raised. At our final sitting, Mr Wilson invited us to move away from the issues raised in

our terms of reference, and to examine the merits of the merger itself. This we are not willing to do. The question whether or not the merger should proceed is one for decision by the companies concerned, and will be the subject of particular consideration at the forthcoming Extraordinary General Meeting of Lion.

10.5 There are three matters arising out of the records of the deliberations of the Lion Board, which we think we should mention explicitly.

(a) Mr Myers made disclosures to the Lion Board of his interests disclosed to us. He absented himself from the meeting when the relevant resolutions were being discussed and decided.

(b) At one time, the Lion Board had been told that Messrs Mace and Cooper had an option to purchase the FR holding in Nathan. This information appears to have reached the Board from one of the expert's reports. It impressed the Board. The minutes record that it was noted that the Mace/Cooper interests "held the key to the Fay Richwhite shareholding". The evidence we have received shows that the information was incorrect. We therefore looked carefully at subsequent developments. We are satisfied that this error was removed from the Board's consideration at the crucial meeting on 14 and 15 January 1988.

(c) The minutes of the meeting of the Lion Board do not disclose whether or not the Board was aware of the undertakings given by FR to Nathan which we have mentioned in paragraph 7. Mr Smith, the Finance Director of Lion, told us that in his opinion the existence of these undertakings would not have affected the Board's decisions. We note that the Lion Board gave careful consideration to the question whether Lion should make an offer of a "fixed percentage premium for delivery of 100% of Nathan to Lion with methodology in the hands of Nathans' directors/major shareholders". For reasons the directors thought sufficient, they did not proceed in that way. We will wish to examine that procedure in the second stage of this enquiry, when we will consider the question whether any change to the Takeover Code should be made.

11. The Stock Exchange questions

We think we have said enough to set the background to the answers to the questions raised by the Stock Exchange.

Question 1: The full details of the price (including interest content) at which Fay Richwhite is prepared to sell its holding to Lion.

Answer: The terms of the contract are set out as attachment H.

Question 2: Which party was the beneficial owner of the 'Fay Richwhite' holding.

Answer: FR is the beneficial owner of the shares in Nathan indicated alongside the letters "FR" in paragraph 4.2, and Messrs Fay and Richwhite personally and jointly are the beneficial owners of the shares indicated in that paragraph alongside their names. There are no outstanding interests in such shares except:

(a) the interests of financiers who hold securities over them to secure advances, interest and other monies, and

(b) the rights of Nathan mentioned in paragraph 7, and

(c) the conditional rights of Lion mentioned in paragraph 10.

Question 3: The existence of the $20 million advance to Fay Richwhite and the put option/underwriting agreement against the Cooper/Mace investment company.

Answer: C. & E. paid $20 million to FR in the circumstances mentioned in paragraph 9 of this report.

Question 4: The reasons why Mr A.D. Myers stood as guarantor for both the $20 million advance and the put option/underwriting agreement.

Answer: Mr Myers told us that he signed the guarantees to prevent the sale by Fay Richwhite of its Nathan shares to other persons.

Question 5: Details of the basic terms and conditions of the put option held by Fay Richwhite against the various parties who guaranteed it - (The disclosure of the exercise price may be a matter needing confidentiality until Fay Richwhite conclude a binding agreement to sell).

Answer: The terms of the put option and guarantee are set out in attachments E and F, except that the price has been deleted.

Question 6: We would also appreciate details of the 'pre-emptive' agreement between Fay Richwhite and L.D. Nathans."

Answer: The terms of the "pre-emptive" agreement between FR and Nathan are described in paragraph 7, and the text of one of the undertakings is set out in attachment B.

For the Securities Commission

Chairman

2 March, 1988

ATTACHMENTS

Terms of Reference. A.

Letter from Nathan to D. Richwhite. B.

Thor options contract. C.

Letter Mace to Fay Richwhite 12 January 1988. D.

"Agreement Conferring Option to purchase shares in L.D. Nathan & Co. Limited" E.

Deed of Guarantee. F.

Letter Campbell & Ehrenfried to Fay Richwhite dated 24 December 1987. G.

"Agreement for Sale and Purchase of Shares in Wilshire Investments (1986) Limited". H.

ATTACHMENT

A.

Securities Commission

Level 6, Greenock House
102-112 Lambton Quay—39 The Terrace
P.O. Box 1179
Wellington 1, New Zealand
Telephone (04) 729-830
Facsimile (04) 728-076

Our ref: ....

TERMS OF REFERENCE FOR AN ENQUIRY

Pursuant to section 10 Securities Act 1978 the Securities Commission has decided to undertake a public enquiry into:

(1) the facts and circumstances in which Fay, Richwhite and Company Limited ("Fay, Richwhite") or any person associated with Fay, Richwhite acquired or agreed to acquire shares in L.D. Nathan & Co. Limited ("Nathan"), and

(2) the facts and circumstances in which Lion Corporation Limited ("Lion") or any person associated with Lion acquired or agreed to acquire Nathan shares, or any interest direct or indirect in Nathan shares, from Fay, Richwhite or any person associated with Fay, Richwhite.

For this purpose the Commission has decided to obtain evidence in relation to the following matters:

(1) The terms and conditions of all agreements to which Fay, Richwhite or any associated person is a party relating to the acquisition or disposition of Nathan shares or any interest direct or indirect in Nathan shares;

(2) The terms and conditions of all agreements to which Lion or any associated person is a party relating to the acquisition or disposition of Nathan shares or any interest direct or indirect in Nathan shares;

(3) The circumstances in which the agreements were concluded;

(4) Whether or not Lion complied with all applicable provisions of the Listing Requirements of the New Zealand Stock Exchange in respect of the acquisition or disposition of Nathan shares or any interest direct or indirect.

(5) Any other matters relevant to the review of any practice relating to securities.

10 February 1988

L. D. NATHAN & CO. LIMITED

3 December 1986

ATTACHMENT

B.

Confidential

Mr D Richwhite
Fay Richwhite & Co Limited
PO Box 1650
AUCKLAND

Dear David

LD NATHAN & CO LIMITED

I refer to our recent discussions regarding the acquisition by Fay Richwhite & Company Limited or its associates, of shares in the capital of LD Nathan & Co Limited. It is our understanding that the shareholdings now controlled by Fay Richwhite & Company Limited or its associates ("Fay Richwhite") following nomination by Nathan's Board are[ ]specified preferences shares, [ ] ordinary shares ex-Woolstar Investments Limited and [ ] ordinary shares ex-Rangatira Limited. [FIGURES DELETED]

I am writing this letter to record the understandings and arrangements agreed between Fay Richwhite and the Board of LD Nathan & Co Limited ("Nathan") in respect of its holding of such shares and any bonus shares, shares arising on cash issue, or other securities issued in respect of such holding (together referred to as the Nathan shares).

The terms of the understanding and arrangement are as follows:

1. If Fay Richwhite wishes to dispose of the Nathan shares (as defined above) or any of them it will first consult with Nathan and for such purpose will advise Nathan in writing of the number and class of shares that are to be disposed of, the price per share and the other terms of disposition acceptable to it. Such advice cannot be withdrawn during the 45 day period referred to in 2.

2. For a period of 45 days following such advice, Nathan shall have the opportunity to locate a purchaser or purchasers who is or are prepared to purchase from Fay Richwhite the Nathan shares to be disposed of as so advised at the price and on other terms as advised by it.

3. In the event of Nathan locating a purchaser Fay Richwhite shall transfer such shares to such purchaser(s) as nominated.

4. If at the expiration of the said 45 day period the Nathan shares the subject of advice from Fay Richwhite under 1 above have not been disposed of in accordance with 2 and 3 above, it may for a period of three months thereafter dispose of such shares at a price of not less and on terms no less favourable than those advised to Nathan, but if Fay Richwhite wishes to dispose of the said shares at a lower price or on other terms it must first again give notice to Nathan in accordance with 1 above.

Please indicate your confirmation of the above by counter-signing the copy of this letter and returning it to me.

[SIGNED FOR NATHAN]

ATTACHMENT

C.

MEMORANDUM OF AGREEMENT made this 30th day of June 1987

PARTIES

FIRST [NAME DELETED]

(hereinafter with its successors called "the Owner")

SECOND THOR SECURITIES LIMITED a company duly incorporated under the laws of the Cook Islands and having its principal place of business at Rarotonga (hereinafter called "Thor")

WHEREAS

(A) The Owner is the owner of or controls the disposition of the Shares.

(B) The Owner has agreed to grant Thor an option to purchase the Shares.

(C) Thor has agreed to grant the Owner the option of selling the Shares to Thor.

(D) For the better recording of their respective rights and obligations the parties have agreed to enter into this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that during the life of the Options herein contained or any agreement for sale and purchase pursuant thereto:

1. Interpretation:

1.1 For the purposes of this Agreement the following words and phrases shall have the meanings respectively given to them.

(a) "the Company" means L.D. Nathan & Co Limited a duly incorporated company having its registered

office at Auckland.

(b) "the Shares" means the Ordinary Shares and the Specified Preference Shares.

(c) "the Ordinary Shares" means

[DESCRIPTION DELETED]

and any other shares as may be represented thereby from time to time arising from a subdivision consolidation or other capital reconstruction of the Company relating to such shares and any bonus shares including bonus shares in lieu of dividend issued in respect thereof and subject to adjustment downwards in accordance with Clause 15.1 of this Agreement and subject to anything else herein contained together with the rights attaching to ordinary shares in the Company on the Settlement Date.

(d) "the Specified Preference Shares" means

[DESCRIPTION DELETED]

and any other shares as may be represented thereby from time to time arising from a subdivision consolidation or other capital

reconstruction of the Company relating to such shares and any bonus shares including bonus shares issued in lieu of dividend issued in respect thereof and subject to anything else herein contained together with the rights attaching to specified preference shares in the Company on the Settlement Date.

(e) "Settlement Date" means the date two (2) business days after the date of the first of (if more than one) the notices given under either of Clauses 2.1 or 3.1 of this Agreement.

(f) "the Dividends" means the amount of all dividends in respect of which ordinary and/or specified preference shares in the Company are quoted ex-dividend on the New Zealand Stock Exchange during the period commencing on the 5th day of June 1987 and expiring on the Settlement Date (and for the sake of clarity including the interim dividend of the Company having an ex-date of the 10th day of June 1987) whether of a capital or income nature in the hands of the Company or the Owner payable by the Company to the Owner and arising out of the ownership of the Shares and includes any such dividends paid on any bonus shares issued as set out in Clause 6 hereof but does not include bonus shares issued in lieu of dividend in respect of the Ordinary Shares.

(g) "Purchase Price" means the aggregate of:

(i)

[FIGURES DELETED]

and

(ii) A sum equivalent to interest at the rate of <u>TWELVE DECIMAL FIVE</u> per cent (12.5%) per annum on the sum referred to in (i) above calculated

on a daily basis from and including the 5th day of June 1987 to the Settlement Date.

Less the Dividends and subject to such other adjustments as may be made pursuant to Clauses 12 and 15 of this Agreement.

(h) "Commencement Date" means the 1st day of October 1987.

(i) "Expiry Date" means the 30th day of October 1987.

(j) "New Security" means any shares options convertible securities property or rights of whatever kind and whether or not having an element of bonus about them offered or distributed (other than on a winding up) by the Company to the Owner and arising out of the ownership of the Shares or any of them but does not include bonus shares.

(k) "On-Sale" means a sale or other disposition of the Shares or any of them by Thor and includes an agreement to sell or dispose.

(l) "Offer" means an offer to purchase the Shares whether written or oral or in any other form whatsoever and whether conditional or not and whatever the consideration and whether or not such an offer constitutes a "take-over offer" as that term is defined in the Companies Amendment Act 1963 but does not include any such offer made by or on behalf of either or both of the parties hereto or any one or more of their associated or related companies whether alone or in combination with any other person.

(m) "Business Day" means a day on which trading banks are open for business in both Wellington and Auckland.

1.2 Any reference in this Agreement to a rate or rates of interest whether by reference to a number or a formula shall be construed as a reference to a rate of interest net of income tax at the rate of <u>THIRTY THREE CENTS</u> ($0.33) per dollar as if such interest was subject to income tax in the hands of the recipient whether or not such interest is actually subject to income tax.

1.3 The singular shall include the plural, words importing one gender only shall include all other genders, all references to Acts of Parliament shall include Regulations validly made thereunder and each vice-a-versa, and headings of clauses shall not affect the interpretation of this Agreement.

<u>2.0 Option to Sell the Shares</u>

2.1 On any business day during the period commencing the Commencement Date and expiring on the Expiry Date the Owner may give Thor written notice requiring Thor to purchase the Shares and upon receipt of such notice this Agreement shall constitute an agreement for sale and purchase of the Shares.

<u>3.0 Option to Purchase the Shares</u>

3.1 On any business day during the period commencing on the Commencement Date and expiring on the Expiry Date Thor may give the Owner written notice requiring the Owner to transfer or procure the transfer of the Shares to Thor (or the person referred to in Clause 16.2 of this Agreement) and upon receipt of such notice this Agreement shall constitute an agreement for sale and purchase of the Shares.

4.0 Sale of Shares

4.1 Upon the earlier of the exercise of the rights contained in either of Clauses 2.1 and 3.1 of this Agreement the Owner shall sell and Thor shall purchase the Shares for the Purchase Price which shall be paid by Thor to the Owner in cash prior to twelve noon on the Settlement Date on which date the Owner will execute in favour of Thor a valid unstamped but otherwise registrable transfer of the Shares and deliver the same to Thor together with all Share Certificates and other documents of title in respect of the Shares.

4.2 Notwithstanding anything contained in this Agreement:

(i) The options conferred by Clauses 2.1 and 3.1 of this Agreement do not constitute conditional contracts to sell or purchase the Shares, or any other rights; and

(ii) A contract for the sale and purchase of the Shares shall come into existence only if and upon exercise of one or other of the options contained in Clauses 2 and 3 of this Agreement and upon any such exercise such contract shall automatically come into existence with effect from the date of exercise of either of such options.

5.0 New Security

5.1 Thor may not less than three (3) business days after the date of the offer of any New Security advise the Owner of Thor's desire to take up such New Security in which event Thor shall (if any sum shall be payable prior to the Settlement Date) as soon as practicable advance to the Owner such sum or sums as may be necessary to take up that New Security whereupon the Owner will take up the New Security and immediately assign it to Thor as if it was an assignment of the rights thereof and in the event no sum or

sums being payable in respect thereof and Thor having given the pre-requisite notice the Owner shall take the same up whereupon such New Security shall be deemed to be included in the Shares.

5.2 In the event of Thor not giving the notice referred to in Clause 5.1 of this Agreement within the time specified then the Owner may either:

(i) take up the New Security or dispose of the right to do so which New Security and right shall not be subject to this Agreement; or

(ii) allow the right to the New Security to lapse in which case neither party shall in respect of that New Security have any claim against the other of them.

6.0 Bonus Issues

6.1 In the event that the Company makes any bonus issue of shares to the Owner arising out of the ownership of the Shares then such bonus shares shall be transferred to Thor upon payment of the Purchase Price on the Settlement Date or if the said bonus shares shall not have been issued by such date then on the date of issue.

7.0 Voting Rights

7.1 All voting rights in respect of the Shares shall be held by and may be exercised by the Owner at any time up to the Settlement Date PROVIDED HOWEVER that the Owner shall consult with Thor prior to such exercise in order to advise Thor of the Owner's proposed exercise or non exercise of the said voting rights.

8.0 Winding Up

8.1 In the event of the Company being wound up prior to the Settlement Date Thor will pay to the Owner on the date that would have been the Settlement Date if the Company had not been wound up the Purchase Price less any amount the Owner has received on such winding up. Following any such payment by Thor to the Owner the Owner will assign to Thor any entitlement the Owner may have to any additional money on any such winding up of the Company.

9.0 Offers

9.1 The Owner shall immediately notify Thor if the Owner receives either directly or indirectly an Offer or notice of an Offer and the Owner and Thor shall forthwith meet together to agree the course of their mutual obligations under this Agreement PROVIDED HOWEVER that nothing in this Clause shall in any way affect the rights and obligations of the parties under Clauses 2 and 3 of this Agreement.

10.0 Default

10.1 If from whatever cause save the default of the Owner any moneys payable pursuant to this Agreement are not paid on the due date for payment thereof then Thor shall pay to the Owner interest on such amount so unpaid from the Date of Settlement until payment at a rate being Five per cent (5%) per annum above the Prime Non Bank Endorsed Commercial 90 day Bill Rate posted on the Reuters Screen at noon on the date of such default; but nevertheless this stipulation is without prejudice to any of the Owner's other rights or remedies hereunder or at law.

10.2 In the event of Thor making default in the payment of any moneys payable pursuant to this Agreement and such default continues for a space of three (3) days (it being agreed that time is an essential term hereof) then without preju-

dice to any other rights or remedies available to the Owner at law or in equity the Owner may:

(a) Sue Thor for specific performance;

OR

(b) Cancel the contract and in that event it may pursue all or any of the following remedies namely:

(i) Retain for its own benefit the Shares together with any bonus shares issued to it and the Owner may forfeit and retain for its own benefit any Dividends paid in respect of the Shares;

(ii) Resell the Shares whether in one lot or separately and either for cash or on credit and upon such other terms and conditions as it thinks proper in its sole discretion.

10.3 If on any resale of the Shares pursuant to Clause 10.2 of this Agreement contracted within six (6) months from the Settlement Date the Owner incurs a loss (after taking account of any Dividends, bonus issues and New Securities paid issued or accruing to the Owner) Thor shall pay to the Owner as damages the amount of such loss which shall include interest at the rate provided in Clause 10 of this Agreement from the Date of Settlement to the date the Owner received payment for the Shares on resale thereof and all costs and expenses reasonably incurred by the Owner on such resale. Any increase in price on a resale of the shares shall belong to the Owner.

11.0 Force Majeure

11.1 If there shall be any intervening event arising from government legislation, changes to laws, regulations or any interpretations of existing laws or regulations that will or will in any probability cause the effect of the terms of this Agreement to be materially altered then the parties hereto shall immediately meet with a view to revising the terms of this Agreement so as to give effect to the original intention of the parties hereunder PROVIDED HOWEVER that nothing in this Clause shall in any way affect the rights and obligations of the parties under Clauses 2 and 3 of this Agreement.

12.0 Escalation of Purchase Price

12.1 The parties acknowledge that the sum referred to in Clause 1.1(g)(i) of this Agreement has been arrived at by using a notional sum of ______________ per share in respect of the Ordinary Shares and ______________ per share in respect of the Specified Preference Shares (jointly and severally "the Regulated Price").

FIGURES DELETED

12.2 In the event of Thor or any of its affiliates or associated or related companies on or after the 5th day of June 1987 and prior to the Settlement Date purchasing or otherwise acquiring or agreeing so to do whether alone or in combination with any other person any ordinary or specified preference shares in the Company either directly or indirectly at a price or deemed price or on a basis which is greater than ______________ in respect of such ordinary shares or ______________ in respect of such specified preference shares (such prices being adjusted to take account of any dividends, bonus and other issues having a bonus element, and consolidations or subdivisions of capital by

FIGURES DELETED

the Company and paid made or effected prior to such offer agreement or acquisition) ("jointly and severally the Escalated Price") then the sum referred in Clause 1.1(g)(i) shall be adjusted to such sum as it would have been if the Regulated Price in respect of that class of the Shares was the Escalated Price.

12.3 In the event of Thor agreeing to sell or dispose of the Shares or any of them at any time between the 5th day of June 1987 and the Settlement Date ("the On-Sell Date") and at a price or deemed price ("the On-Sell Price") greater than the Regulated Price paid in respect of those of the Shares so sold or disposed of together with a sum equivalent to interest thereon calculated on a daily basis at the rate of TWELVE DECIMAL FIVE per cent (12.5%) per annum from and including the 5th day of June 1987 up to but excluding the On-Sell Date ("the Adjusted Purchase Price") then Thor shall forthwith upon such disposition notify the Owner of the same and upon the earlier of the settlement of such disposition and the Settlement Date pay to the Owner a sum equivalent to fifty per cent (50%) of the difference between the Adjusted Purchase Price and the On-Sell Price.

13.0 Notices

13.1 Any notice required to be served hereunder shall be sufficiently delivered if posted to or left at either the registered office or last known place of business of the party on which it is to be served.

14.0 Warranty as to Title

14.1 On any transfer of any bonus shares pursuant to Clause 6.1 of this Agreement, the Shares and any New Security to Thor the Owner upon receipt of all moneys due and payable pursuant to this Agreement in relation to the property so transferred warrants to Thor that the said bonus shares, the Shares and every New Security shall be free of all liens encumbrances and charges.

15.0 Pre-Emption

15.1 Thor acknowledges that [FIGURES DELETED] of the Ordinary Shares are subject to a certain pre-emption agreement dated the 10th day of December 1986 between the Owner and the Company and that if a waiver of all rights thereunder by the Company and all other interested parties is not obtained prior to the Settlement Date then those of the Ordinary Shares shall cease to be subject to this Agreement and the Purchase Price shall be adjusted accordingly.

16.0 Statutory Consents

16.1 Thor hereby warrants that it has obtained all necessary statutory consents required to enable it to purchase the shares and further that it will do all things necessary to ensure that all such consents are in full force and effect on the Settlement Date.

16.2 It will be sufficient compliance with Clause 16.1 of this Agreement for Thor to direct the Owner to transfer the Shares to a third party nominated by Thor in writing prior to the Settlement Date if such third party has all necessary statutory consents at the time of such transfer PROVIDED HOWEVER that Thor shall indemnify the Owner from and against any and all costs expenses and liabilities arising out of any such nomination and no such nomination shall in anyway affect the obligations of and liabilities of Thor under this Agreement.

17.0 Jurisdiction

17.1 This Agreement shall be subject to the laws of New Zealand in all things and in executing this Agreement the parties hereto submit to the jurisdiction of the High Court of New Zealand.

17.2 The Owner shall, if required by Thor use its best endeavours to procure registration of the Shares prior to

the date of the exercise of either of the options in Clauses 2 and 3 of this Agreement and continuing at least until the Settlement Date on a branch register of the Company located in Thor's place of domicile PROVIDED HOWEVER that Thor shall and does hereby indemnify the Owner from and against all costs expenses and liabilities incurred in relation to such transfer of register and including by way of example but not of limitation the cost of establishing such a register and operating the same.

18.0 Facsimile Execution

18.1 The Parties acknowledge that this Agreement may be executed on the basis of an exchange of facsimile copies thereof, and confirm that their respective execution of this Agreement by such means shall be a valid and sufficient execution.

DATED this 30th day of June 1987.

[EXECUTED BY THE OWNER]

THE COMMON SEAL of	)
THOR SECURITIES LIMITED	)
was hereunto affixed	)
in the presence of:-	)

HAMILTON LIMITED, AS DIRECTOR
BY ITS NOMINEE

ATTACHMENT

D.

12 January 1988

Mr D. McK. Richwhite,
Fay, Richwhite & Company Limited,
P.O. Box 1650,
AUCKLAND

Dear David,

Happy New Year. I hope you had a good break.

The purpose of this note is to record the principles of the arrangements agreed before Christmas, now that Douglas Myers has withdrawn from Campbell & Ehrenfried Investments Limited.

As you are probably aware, Campbell & Ehrenfried Investments Limited has in round figures about 900,000 shares in L.D. Nathan and through your brokerage division had agreed to acquire a further 2,000,000 shares that have been offered to your group, settlement on these being due early February.

As the Campbell & Ehrenfried proposal will not be proceeding I confirm its agreement in principle to sell the shares to Fay Richwhite interests. These shares when aggregated with the existing parcel of shares controlled by Fay Richwhite will strengthen its negotiating position. The sale is on the understanding that you will seek to dispose of the total holdings, to a third party compatible with the interests of Nathans, and it is accepted that the sale is subject to obtaining any necessary governmental consents.

In respect of pricing, the principle is that the sale price will be an amount equal to the various costs incurred by C & E in respect of its proposals, including the purchase price of the shares and costs in relation to the funding and so forth. Our respective accounting people can finalise the figures in due course.

With regard to payment, this will be completed at the same time as you complete the sale of the total parcel, or if you change your mind and continue as a holder at such time as agreed. In the interim we respect the principle that Campbell & Ehrenfried will have responsibility to arrange funding of the shares, although

of course again we should work together in this regard to reduce the holding costs.

Sincerely,

C.R. Mace

ATTACHMENT

E.

FAY, RICHWHITE & COMPANY LIMITED

AND

CAMPBELL AND EHRENFRIED INVESTMENTS LIMITED

AGREEMENT CONFERRING OPTION TO PURCHASE SHARES IN L.D. NATHAN & CO. LIMITED

RUSSELL McVEAGH McKENZIE BARTLEET & CO.
SOLICITORS
AUCKLAND

5899C

AGREEMENT dated the 22nd day of December 1987

PARTIES

1. FAY, RICHWHITE & COMPANY LIMITED ("Fay, Richwhite")

2. CAMPBELL AND EHRENFRIED INVESTMENTS LIMITED ("C & E")

AGREEMENT

1. Interpretation

1.1 In this agreement, unless the context otherwise requires:

"Business Day" means any day of the week on which registered banks are open for business in Auckland.

"the Company" means L.D. Nathan & Co. Limited.

"Exercise Period" means the period from 22 January 1988 to 10 March 1988 (both dates inclusive).

"the Option" means the option referred to in clause 2.1.

"Purchase Price" means the sum of $ [FIGURES DELETED]

"Settlement Date" means the day which is 7 Business Days after the date of exercise of the Option.

"the Shares" means the following shares in the capital of the Company:

(a) 26,376,289 fully paid ordinary shares of 50 cents each;

(b) 1,190,071 fully paid 18% preference shares of $2.50 each;

(c) 7,667 fully paid 15.5% preference shares of $1.50 each.

2. The Option

2.1 C & E grants to Fay, Richwhite an option to require C & E to purchase the Shares.

2.2 The Option shall be exercisable upon Fay, Richwhite giving written notice of such exercise to C & E at any time during the Exercise Period.

2.3 Upon exercise of the Option, Fay, Richwhite shall procure the sale and C & E shall purchase the Shares for the Purchase Price which shall be paid by C & E to Fay, Richwhite in cash prior to 12 noon on the Settlement Date

upon which date Fay, Richwhite shall procure to be executed in favour of C & E or its nominee transfers of the Shares and procure the same to be delivered to C & E or its nominee together with all share certificates and other documents of title in respect of the Shares.

2.4 If the Option is exercised:

(a) In addition to the Purchase Price, C & E shall pay to Fay, Richwhite interest on the Purchase Price at the rate of [FIGURES DELETED] per day from and inclusive of 18 December 1987 up to and including the date of completion of the purchase of the Shares;

(b) C & E shall pay to Fay, Richwhite the interest payable pursuant to clause 2.4(a) prior to 12 noon on the date of completion of the purchase of the Shares.

2.5 In consideration of the sum of $1 paid to C & E by Fay, Richwhite (the receipt of which is acknowledged by C & E) C & E agrees that the Option shall be irrevocable.

3. Transactions Affecting the Capital of the Company

3.1 In the event of any sub-division or consolidation of the share capital of the Company or any bonus issue or other transaction affecting the share capital of the Company, if the Option is exercised the Shares shall include any new shares in the Company which are issued, in respect of the Shares as a result of such sub-division, consolidation, bonus issue (including bonus shares issued pursuant to any share investment plan operated by the Company) or other similar transaction and C&E shall be entitled to all other benefits (if any) which arise out of the relevant transaction.

3.2 If the Company declares, pays or makes any dividend, bonus or other cash distribution after the date hereof and C&E exercises the Option, Fay, Richwhite shall on the Settlement Date pay to C&E in cash an amount equivalent to the dividends, bonuses and cash distributions paid in respect of the Shares.

3.3 (a) For the purposes of this clause, the expression "New Security" means any shares, options, convertible securities, property or rights of whatever kind and whether or not having an element of bonus offered or distributed (other than on a winding up) by the Company after the date of this agreement and arising out of the ownership of the Shares of any of them but does not include bonus shares.

(b) If C&E not later than 5 business days after the date of any offer of any New Security advises Fay, Richwhite of C&E's desire to take up such New Security and (if any sum is payable prior to the Settlement Date in respect of such New Security) pays to Fay, Richwhite such sum as may be necessary to take up that New Security, Fay, Richwhite shall procure that New Security to be taken up and in the event that no sum is payable in respect thereof and C&E has given the prerequisite notice, Fay, Richwhite shall procure that New Security to be taken up whereupon such New Security shall be deemed to be included in the Shares.

(c) In the event of C&E not giving notice referred to in clause 3.3(b) within the time specified (time being of the essence) Fay, Richwhite may either:

(i) Take up the New Security or dispose of the right to do so; or

(ii) Allow the right to the New Security to lapse in which case neither party shall in respect of that New Security have any claim against the other.

(d) If the Option is not exercised after payment by C&E of any moneys in respect of any New Security pursuant to clause 3.3(b), Fay, Richwhite shall prior to 12 noon on 11 March 1988 pay to C&E the amount which C&E shall have paid to Fay, Richwhite for that purpose.

4. Miscellaneous

4.1 The Option does not constitute a conditional contract to sell or purchase the Shares or any other rights and a contract for the sale and purchase of the Shares upon the terms set out in this agreement shall come into existence only if and upon exercise of the Option. Upon such exercise such contract shall automatically come into existence with effect from the date of exercise of the Option.

4.2 If the purchase of the Shares by C & E pursuant to exercise of the Option requires clearance or authorisation under the Commerce Act 1986 ("the Act"), then and in such case:

(a) The contract for sale and purchase of the Shares which shall come into existence upon exercise of the Option shall be subject to clearance being given or authorisation being granted in accordance with the Act; but

(b) If such clearance is not given or authorisation is not granted by the Settlement Date, C & E shall procure one or more qualifying third parties to complete the purchase of the Shares in accordance with the terms of this agreement on the Settlement Date.

For the purposes of this agreement, the expression "qualifying third parties" means:

(c) Any person who is legally entitled to purchase the Shares without the requirement of clearance or authorisation under the Act;

(d) Any person who has been given such clearance or granted such authorisation as at the Settlement Date.

4.3 Fay, Richwhite warrants that on the Settlement Date the Shares shall be transferred to C & E or its nominee free of any charge, encumbrance or other adverse interest and Fay, Richwhite shall produce to C&E on settlement such undertakings, discharges of securities and other evidence as C&E may reasonably require in order to be satisfied as to fulfilment of this warranty.

4.4 Time shall be of the essence of the obligations of both parties under this agreement.

4.5 Both parties shall keep the existence and terms of this agreement strictly confidential and neither party shall disclose any information concerning this agreement without the prior approval of the other party.

4.6 The parties shall do all such acts, things and deeds and execute all such documents as may be necessary or desirable to give effect to the provisions of this agreement according to its spirit and intent.

4.7 (a) Except as provided in clause 4.7(b), neither party shall be entitled to assign or otherwise alienate its interest under this agreement without the prior written consent of the other party.

(b) C & E may nominate a qualifying third party to complete the purchase of the Shares pursuant to this agreement but in such case, notwithstanding such nomination, C & E shall remain bound by the terms and conditions of this agreement and shall as a principal obligor perform and observe all the terms and conditions to be performed on the part of C & E and the nominee. Fay, Richwhite may grant any time or other indulgence to or compound with or release C & E's nominee from payment or performance

under this agreement without affecting the liability of C & E nor shall the death or winding-up of the nominee affect such liability.

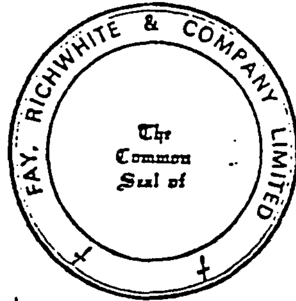
4.8 A waiver by either party of any breach of the obligations of the other party under this agreement shall not prevent the subsequent enforcement of those obligations and shall not be deemed a waiver of any subsequent breach.

4.9 The parties acknowledge that Fay, Richwhite does not itself own the Shares but this shall not in any way affect or limit the obligations of Fay, Richwhite hereunder.

4.10 C & E shall be entitled to set off and apply any part of the Purchase Price which is otherwise payable under this agreement against any moneys owing by Fay, Richwhite to C & E at the Settlement Date.

EXECUTION BY THE PARTIES

THE COMMON SEAL of FAY, RICHWHITE & COMPANY LIMITED was affixed in the presence of:)



________________ Director

________________ Director/~~Secretary~~

THE COMMON SEAL of CAMPBELL AND EHRENFRIED INVESTMENTS LIMITED was affixed in the presence of:)

________________ Director

________________ Director

ATTACHMENT

F.

DEED OF GUARANTEE

ARTHUR DOUGLAS MYERS, PETER CHARLES COOPER,
CHRISTOPHER ROBERT MACE, ROBIN LANCE CONGREVE
and GEOFFREY THOMAS RICKETTS

FAY, RICHWHITE & COMPANY LIMITED

RUSSELL McVEAGH McKENZIE BARTLEET & CO.
SOLICITORS
AUCKLAND
5922C

DEED dated the 23rd day of December 1987.

PARTIES

1. ARTHUR DOUGLAS MYERS, PETER CHARLES COOPER, CHRISTOPHER ROBERT MACE, ROBIN LANCE CONGREVE and GEOFFREY THOMAS RICKETTS ("the Guarantors")

2. FAY, RICHWHITE & COMPANY LIMITED ("Fay, Richwhite")

INTRODUCTION

A. By an agreement dated 23rd December 1987 ("the Agreement") entered into between Fay, Richwhite and Campbell and Ehrenfried Investments Limited ("C&E"), C&E granted to Fay, Richwhite an option to require C&E to purchase certain shares in L.D. Nathan & Co. Limited.

B. Fay, Richwhite entered into the Agreement at the request of the Guarantors and in consideration of the Guarantors entering into this Deed.

THIS DEED WITNESSES

1. The Guarantors jointly and severally guarantee the due and punctual payment of the moneys payable by C&E under the Agreement and the due and punctual performance by C&E of the obligations contained or implied in the Agreement and on the part of C&E to be observed and performed.

2. Although as between the Guarantors and C&E the Guarantors may be sureties only, yet as between the Guarantors and Fay, Richwhite the Guarantors shall be jointly and severally liable as principal debtors for the observance and performance of all the obligations of C&E under the Agreement and may be so treated in all respects by Fay, Richwhite.

3. The insolvency or winding up of C&E or the bankruptcy of any of the Guarantors or any other person or the giving of time or other indulgence by Fay, Richwhite to C&E or any of the Guarantors or any other person or the exercise or non-exercise by Fay, Richwhite of any of the powers of Fay, Richwhite under the Agreement or conferred by law or the variation of any of the provisions of the Agreement or any other dealing whatsoever by Fay, Richwhite with C&E or any of the Guarantors or any other person shall not exonerate or release the Guarantors or any of them from liability under this deed nor shall any of the Guarantors be released by any act, omission, matter or thing whatsoever whereby the Guarantors as sureties only would have been so released.

EXECUTION BY THE PARTIES

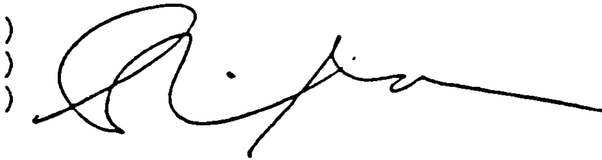
SIGNED by)
ARTHUR DOUGLAS MYERS)
in the presence of:)

P Holland Receptionist

SIGNED by)
PETER CHARLES COOPER)
in the presence of:)

T.H.C. Murray
Accountant
Auckland

SIGNED by)
CHRISTOPHER ROBERT MACE)
in the presence of:)

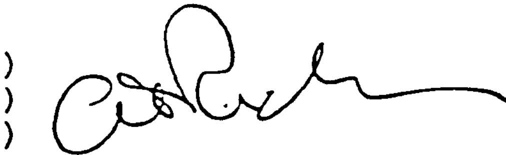


T.H.C. Murray
Accountant
Auckland

SIGNED by)
ROBIN LANCE CONGREVE)
in the presence of:)

T.H.C. Murray
Accountant
Auckland

SIGNED by)
GEOFFREY THOMAS RICKETTS)
in the presence of:)



T.H.C. Murray
Accountant
Auckland

ATTACHMENT

G.

Campbell and Ehrenfried Investments Ltd
P.O. Box 112
Auckland.

24 December 1987

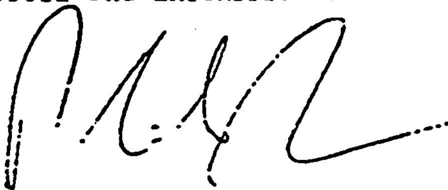
Fay, Richwhite & Company Limited,
P.O. Box 1650,
AUCKLAND.

Dear Sirs,

We refer to the Put Option signed between Campbell and Ehrenfried Investments Limited and Fay, Richwhite & Company Ltd dated 23 December 1987.

Please find enclosed our cheque for $20,000,000 in part settlement of our obligations under this Option Agreement.

Yours faithfully,
Campbell and Ehrenfried Investments Limited



P.C. Cooper
Director

ATTACHMENT

H.

FAY, RICHWHITE & COMPANY LIMITED

A N D

LION CORPORATION LIMITED

AGREEMENT FOR SALE AND PURCHASE OF SHARES IN WILSHIRE INVESTMENTS (1986) LIMITED

RUSSELL McVEAGH McKENZIE BARTLEET & CO.
SOLICITORS
AUCKLAND
2909j

THIS AGREEMENT is made this 5th day of February 1988

BETWEEN FAY, RICHWHITE & COMPANY LIMITED a duly incorporated company having its registered office at Auckland ("the Vendor")

A N D LION CORPORATION LIMITED a duly incorporated company having its registered office at Auckland ("the Purchaser")

WHEREAS :-

A. Wilshire Investments (1986) Limited ("the Company") is a duly incorporated company having a share capital of $100 divided into 100 fully paid ordinary shares of $1.00 each

B. The Vendor is the beneficial owner of all the shares in the capital of the Company ("the Shares")

C. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Shares for the consideration and upon and subject to the terms and conditions hereinafter appearing

NOW THIS AGREEMENT WITNESSES as follows:-

1. THE Vendor agrees to sell and the Purchaser agrees to purchase the Shares together with all rights attaching thereto.

2. THE consideration for the purchase of the Shares is the sum of $100 which shall be paid in cash on 9 March 1988 or such other date as may be agreed upon between the Vendor and the Purchaser ("the Settlement Date").

3.(a) THE obligations of the Purchaser under this clause are essential terms of this agreement.

(b) THE Purchaser shall, in addition to payment of the purchase price to the Vendor, pay to the Company on the Settlement Date by way of loan:

(i) The sum of $351,072,680; and

(ii) An amount calculated at the rate of 18% per annum on the sum of $351,072,680 on a daily basis from and inclusive of 1 January 1988 to the Settlement Date.

(The aggregate of the amounts referred to in subclauses 3(b)(i) and 3(b)(ii) hereinafter called "the Loan").

(c) THE Company shall (and the parties will procure that the Company shall) on the date of actual settlement apply the Loan in repayment of the indebtedness referred to in clause 5(h).

(d) IF for any reason (other than the default of the Vendor) any amount to be paid by the Purchaser under this clause 3 shall not be paid on the due date, the Purchaser shall pay to the Company interest at the rate of 25 per centum per annum

calculated on a daily basis on the unpaid amount from the due date until payment but this provision is without prejudice to any of the other rights or remedies of the Vendor or the Company.

(e) THIS clause 3 is intended to create obligations enforceable at the suit of the Company, for purposes of the Contracts (Privity) Act 1982.

(f) IF the Purchaser complies with its obligations under this clause 3 but for any reason (other than default of the Vendor) fails to complete the purchase of the Shares then and in such case the Company shall be absolutely released from any obligation to repay the Loan and neither the Company nor the Vendor shall have any further obligations to the Purchaser.

4. UPON the Settlement Date and upon performance by the Purchaser of its obligations under clauses 2 and 3, the Vendor shall hand to the Purchaser or its representative transfers of the Shares to the Purchaser and/or its nominees, a resolution of the directors of the Company approving such transfers, resignations of the directors and secretary, the share certificates for the Shares or a certificate by the directors that no share certificates have been issued, the common seal of the Company, all statutory registers properly written up and such of the other books, records and documents of the Company as the Purchaser may reasonably require.

5. IN consideration of the Purchaser entering into this agreement the Vendor warrants, undertakes and agrees with and to the Purchaser as follows:

(a) The recitals to this agreement are true and correct in all respects;

(b) The Shares are fully paid up and rank pari passu in all respects AND in the case of shares fully or partly paid up otherwise than in cash that all statutory requirements in respect thereof have been duly complied with;

(c) The Vendor shall not permit the share capital of the Company or any rights attaching thereto to be altered before the Settlement Date;

(d) Neither the Company nor the Vendor shall prior to the Settlement Date enter into any agreement or arrangement providing for a right or option for any person to take shares in the Company on an increase in the capital thereof or otherwise;

(e) The Shares will on the Settlement Date be held by the Vendor free of all liens, charges, encumbrances and other adverse interests;

(f) The balance sheet of the Company at the Settlement Date will be the projected settlement balance sheet (the "Settlement Balance Sheet") set out in the First Schedule, and that the Settlement Balance Sheet has been

prepared in accordance with accepted accountancy principles properly applied and will correctly represent the assets and liabilities of the Company at the Settlement Date.

(g) The Company has, and will on the Settlement Date have, no assets other than the assets referred to in the Settlement Balance Sheet being the shares in the capital of L.D. Nathan & Co. Limited more particularly described in the Second Schedule ("the Nathan Shares");

(h) The Company has, and will on the Settlement Date have, no liabilities of any nature whatsoever whether contingent or otherwise other than the liabilities shown in the Settlement Balance Sheet being indebtedness equal to the amount of the Loan owing by the Company to the Vendor and companies associated with the Vendor in respect of the purchase by the Company of the Nathan Shares;

(i) The Nathan Shares are all fully paid and will on the Settlement Date be held beneficially by the Company free of all liens, charges, encumbrances or other adverse interests;

(j) Should it be ascertained at any time that the Company was liable at the Settlement Date (whether contingently or otherwise) to any person or creditor in any sum or sums, or in any other manner whatsoever (other than the liability or liabilities referred to in sub-clause (h) of this clause) the Vendor shall (subject as hereinafter

provided) forthwith upon demand by the Purchaser at any time or times after any such liability or liabilities become known pay to the Purchaser or as directed by the Purchaser a sum equivalent to the amount of each such liability after taking into account the amount of any consequential saving in taxation to the Company or the Purchaser as a result of such liability. The Purchaser shall if reasonably required by the Vendor and subject to such indemnity for costs as the Purchaser may reasonably require, procure the Company to dispute any such liability and take all reasonable steps to have such dispute resolved.

For the purposes of this sub-clause the word "liability" shall include all taxation of any nature (including all penalties, fines, interest, costs and expenses in respect thereof) or any reassessment thereof and any other amount whatsoever arising out of any occurrence or happening which shall have taken place on or prior to the Settlement Date including all costs and expenses incurred by the Company in connection therewith;

(k) The Company is not, and will not on the Settlement Date be, a party to any contract, agreement, guarantee, indemnity or other arrangement of any nature whatsoever, other than contracts in relation to the acquisition of the Nathan Shares all obligations of the Company under which shall have been fulfilled on the date of actual settlement;

(l) The Company is not, and will not on the Settlement Date be, engaged in any litigation nor are any legal proceedings of any kind pending, threatened or being taken against it nor is there now, or will there on the Settlement Date be, any cause of action outstanding which could or might be used for the purpose of commencing proceedings, either civil or criminal, against the Company;

(m) All returns required by the revenue and fiscal authorities have been duly and properly made by the Company and that there is no dispute outstanding with such authorities in respect thereof;

(n) The Company will on the Settlement Date be in possession of all books of account and other records which it is bound by law to retain in its possession either indefinitely or for a particular period or periods;

(o) The records, statutory books and books of account of the Company will on the Settlement Date be duly entered up and contain records of all matters required to be dealt with therein and that all such books and all records and documents of the Company (including documents of title) will on the settlement date be in its possession or under its control ; provided that in respect of the Nathan Shares the Company shall be required only to hold:

(i) The relevant scrip together with duly executed transfers in the name of the Company as transferee; and/or

(ii) Marked transfers in respect of the relevant Nathan Shares; and/or

(iii) Other evidence of title in relation to Nathan Shares to the reasonable satisfaction of the Purchaser;

and that all returns required to be made and documents required to be filed with the Registrar of Companies will have been duly and correctly made and filed;

(p) The copies of the memorandum and articles of association of the Company to be handed to the Purchaser pursuant to clause 5 will be accurate copies of the documents in force on the Settlement Date;

(q) The Company has, and will on the Settlement Date have, no subsidiaries as defined by Section 158 of the Companies Act, 1955;

(r) The Company is not and will not on the Settlement Date be a party to any joint venture, partnership, syndicate or other consortium arrangement.

<u>6.(a) THIS</u> agreement is conditional upon:-

(i) A clearance or authorisation being given under the Commerce Act 1986 to the transfer of the Nathan Shares to the Company or implementation of such acquisition otherwise becoming lawful under that Act;

(ii) A clearance or authorisation being given under the Commerce Act 1986 to the transfer of the Shares to the Purchaser or implementation of this agreement otherwise becoming lawful under that Act;

(iii) All other necessary consents, clearances or approvals (in relation to this agreement and the acquisition of the Nathan Shares by the Company) by any Governmental or regulatory authority, agency or instrumentality in New Zealand being given;

(iv) An offer being made by or on behalf of the Purchaser under the provisions of the Companies Amendment Act 1963 for the acquisition of all the shares in the capital of Nathan (other than the Nathan Shares) to effect a merger between Lion and Nathan as announced to the Stock Exchange on 5 February 1988 and valid enforceable acceptances (conditional only upon such offer being declared unconditional) of the offer being received for such number of shares in Nathan which will (upon completion of the acquisition of such shares) together with the Nathan Shares, enable the Purchaser to exercise or control the exercise in the aggregate of not less than 75% of the voting power at any general meeting of Nathan;

(v) Approval being given by the shareholders of the Purchaser in general meeting to all matters required to implement and give effect to the offer by the Purchaser referred to in clause 6(a)(iv);

(vi) The debenture holders and any other chargeholders of the Vendor (if any) approving the transfer of the Shares to the Purchaser and agreeing to release their respective charges on terms reasonably satisfactory to the Vendor;

(vii) Consent being given by the other party or parties to any agreement or arrangement under which the Company and/or the Vendor enjoys any material benefit where without such consent completion of this agreement could not be effected.

(b) EACH of the parties shall use its best endeavours to procure the fulfilment of the conditions in clause 6(a). Without prejudice to the generality of such obligation, the Purchaser shall procure that the offer referred to in clause 6(a)(iv) shall be despatched to shareholders of L.D. Nathan & Co. Limited not later than 22 February 1988 and shall not be withdrawn for one month after that date.

(c) THE Vendor acknowledges that the conditions contained in clauses 6(a)(iv) and 6(a)(v) have been inserted solely for the protection of the Purchaser and accordingly the Purchaser may waive such conditions or either of them.

(d) SHOULD:

(i) Any of the conditions in clause 6(a) not be fulfilled, or waived in accordance with the provisions of clause 6(c), by 5 p.m. on 8 March 1988 (time being of the essence) or such later time or date as may be agreed upon by the parties; or

(ii) Any consent or approval required in terms of the conditions in clause 6(a) be granted on terms not reasonably acceptable to the party affected thereby;

then this agreement shall be voidable by notice in writing given, in the circumstances referred to in clause 6(d)(ii) by the party affected, and in all other circumstances by either the Vendor or the Purchaser, and if so avoided this agreement shall otherwise be of no further force and effect and all parties shall be released from their obligations hereunder.

7. THE parties agree that they will keep the terms of this agreement strictly confidential and will not make any announcements or disclosures as to the terms of this agreement except:

(a) In a form and manner acceptable to all parties and at such time as is agreed by all parties;

(b) As may be required by law or by the New Zealand Stock Exchange Listing Requirements or otherwise necessary in order to satisfy the conditions in clause 6(a).

8. THE Purchaser acknowledges that it does not enter into this agreement in reliance on any representations howsoever or to whomsoever made except in so far as such representations are embodied in the warranties, undertakings and indemnities on the part of the Vendor contained in this agreement.

9. IF the Vendor shall be liable to the Purchaser in respect of any manner arising under this agreement the amount payable by the Vendor shall be assessed after taking into account any saving in taxation to the Company or the Purchaser as a result of the liability, claim, or other payment or indebtedness of the Company in respect of which the liability of the Vendor arose.

10. THE warranties, undertakings, agreements and indemnities in this agreement shall not merge on settlement of the sale and purchase of the Shares but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

11. THIS agreement shall be governed by and construed and interpreted in accordance with the laws of New Zealand.

12. ALL moneys to be paid pursuant to this agreement shall be paid by 2 p.m. (New Zealand time) on the due date for payment.

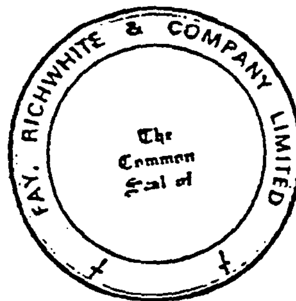
13. TIME is of essence for performance of the obligations of the parties under this agreement including, without limitation, the obligation on the part of the Purchaser to pay the moneys pursuant to clauses 2 and 3 and the obligation on the parties,

to procure the Company to repay the indebtedness referred to in clause 5(h), in each case, by 2 p.m. on the Settlement Date.

14. THE Vendor shall procure that the holder(s) of the Nathan Shares shall prior to the Settlement Date exercise voting powers in relation to the Nathan Shares in such manner as is consistent with the implementation of the transactions embodied in this agreement, including approval (if sought from shareholders of L.D. Nathan & Co. Limited) to this transaction and the acquisition by the Purchaser of the balance of the shares in L.D. Nathan & Co. Limited.

IN WITNESS WHEREOF this agreement has been executed.

THE COMMON SEAL of)
FAY, RICHWHITE & CO. LIMITED)
was affixed in the)
presence of:)



______________________ Director

______________________ ~~Director~~/Secretary

THE COMMON SEAL of)
LION CORPORATION LIMITED was)
affixed in the)
presence of:)

______________________ Director

______________________ Director

______________________ Secretary

FIRST SCHEDULE

(Settlement Balance Sheet refer clause 5(f))

See attached

SECOND SCHEDULE

(Nathan Shares - refer clause 5(g))

(a) 35,139,819 fully paid ordinary shares of 50 cents each.

(b) 1,200,435 fully paid 18% preference shares of $2.50 each.

(c) 7,667 fully paid 15.5% preference shares of $1.50 each.