

# **EQUITY WARRANTS**

## **POLICY PAPER**

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## EQUITY WARRANTS

### A POLICY PAPER

#### 1 INTRODUCTION

- 1.1 In May 1995 the Commission established a working group of its Members to review the market for equity warrants and the rules of securities law which applied.
- 1.2 The working group found that the potential market for equity warrants was substantial in New Zealand.
- 1.3 The working group considered the manner in which the Securities Act and Regulations apply to offers of equity warrants, the difficulties which an issuer faces in complying with the law, the regulation of equity warrants overseas and the possible use of the Commission's power to grant exemptions from securities law.
- 1.4 Those matters are addressed in a discussion paper which was distributed to the public in July 1996. The working group is grateful for the helpful comments received from those making submissions.
- 1.5 After reviewing the submissions the Commission has decided to develop and approve an exemption notice in respect of equity warrants. This paper sets out the general policy of such an exemption notice. A draft exemption notice, which expresses the policy in legal form, is attached as appendix "A".
- 1.6 The exemption will apply if the warrant-issuer is listed on a recognised stock exchange or has entered into a listing agreement to become listed on a recognised stock exchange, in respect of the issue of equity warrants.

- 1.7 A "recognised stock exchange" will be defined in the Notice to mean a stock exchange referred to in the First Schedule of the proposed new notice. The Commission anticipates on the basis of demand to date that the New Zealand stock exchange and Australian stock exchange will initially be included in the schedule.
- 1.8 The exemption will apply to offers of equity warrants where the issuer is unrelated to the issuer of the underlying securities, the underlying securities are quoted on a recognised exchange, the issuer of the underlying securities is a company incorporated in New Zealand or a specified overseas jurisdiction and the warrant holder has the right to require delivery of scrip.
- 1.9 The exemption notice will apply to offers of warrants made (a) in a registered prospectus, or (b) in an overseas offer document that complies with the law of a specified overseas jurisdiction.
- 1.10 The exemption will be subject to certain terms and conditions. These are discussed below. They will vary depending on whether the equity warrant is covered or naked, and whether the offer is made in a registered prospectus or an overseas offer document.
- 1.11 For the purposes of the exemption an equity warrant is "covered" where the warrant-issuer has arranged for a number of underlying securities, which are sufficient to meet the obligation to deliver securities on the exercise of all outstanding warrants, to be held by a trustee for the benefit of the warrant-holders.
- 1.12 We regard a "naked equity warrant" as an equity warrant which is not a covered warrant, in particular, it is a warrant under which the warrant-issuer has agreed to deliver securities on maturity of the warrant but has not agreed to back its obligations to deliver with underlying securities held throughout the warrant period by a trustee for the benefit of the warrant-holder.

- 1.13 The Commission remains willing to consider applications for exemption in respect of particular warrant issues that fall outside this policy on a case by case basis. However it would prefer to accommodate all warrant-issuers within the same class exemption.

## 2 IS IT A SECURITY

- 2.1 The relevant definition of "security" in the Securities Act 1978 is, "*any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes -*

(a) *Any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person;...."*

- 2.2 Although it depends on the terms of the contract, there is often no "interest or right" in respect of any securities underlying an option until the option has been exercised and the contract for sale and purchase of the securities is concluded. The issue is whether in the absence of such a right or interest an equity warrant creates "*an interest or right to participate in...property*" before the warrant has been exercised.

- 2.3 The answer to that question may sometimes be uncertain. However, it may generally be argued that the holder has an interest or right to participate in the property of the warrant-issuer. This seems particularly so when the warrant is issued for value and, indeed, is traded for value in a market immediately after issue.

- 2.4 Whether these warrants are "securities" as defined may turn on whether the term "interest" in the definition of "security" includes a contingent interest in the property of the warrant-issuer.

- 2.5 This question, whether the term "interest" includes a contingent interest, has been addressed by the Commission as part of its present review of the Act. The Commission considers the better view to be that the Act applies to the offers of equity warrants it has

examined to date on the basis that options of this type are themselves securities. It is the Commission's view that this matter should be explicitly dealt with in the Act.

## 2.6 Type of security

- 2.6.1 It is difficult to classify an equity warrant as an equity security, debt security or participatory security as the characteristics of any warrant may vary. It may depend on whether the warrant is naked or covered a fact that may change throughout the life of the warrant.
- 2.6.2 When a warrant is covered the warrant-holder will have an interest in or a right to the securities held by the warrant-issuer and accordingly the warrant may be described as an equity security.
- 2.6.3 Warrants which provide an option for cash settlement have characteristics of debt securities as the warrant-holder has a right to be paid money, contingent upon the exercise of the warrant and the exercise of the cash settlement option. It is also possible that they may be participatory securities. Warrants which provide for cash settlements only, are not within our proposed definition of equity warrants and the exemption will not apply.
- 2.6.4 The Commission considers that, if the warrant-issuer complies with the terms and conditions of the new notice, it should not be necessary in the interest of warrant-holders for the warrant-issuer to appoint a trustee or statutory supervisor where the warrants are debt or participatory securities. These are obligations arising under sections 33(2) and 33(3) of the Securities Act. The proposed notice will exempt issuers from these obligations.
- 2.6.5 There will be an exemption from disclosing the information prescribed in the First, Second and Third Schedules of the Securities Regulations. None of these schedules are completely relevant. The exemption will be subject to a condition that there is disclosure

of information which is directly relevant to the warrant-holder's decision whether to invest in the equity warrants. This will include information that will enable the warrant-holder to form an opinion as to the ability of the issuer to meet its obligation to deliver securities on maturity of the warrant. The specific items of information we propose are set out in paragraph 4.2.2.

### **3 MINIMUM SUBSCRIPTION**

- 3.1 Section 37A(2) of the Securities Act requires payment upon application of an amount of 10% or more of the nominal amount of an equity or participatory security. The purchase price of the warrants will usually be payable in full upon issue of the warrant. It has been suggested that, for the purposes of section 37A(2), the nominal amount of the underlying security in some cases will be the exercise price of the warrant. We accept that this may be so. The purchase price will usually exceed 10% of the exercise price. However this will not always be the case and therefore the exemption notice will include an exemption from s37A(2) of the Securities Act.

### **4 DISCLOSURE REQUIREMENTS**

#### **4.1 Price**

- 4.1.1 The Commission intends to grant an exemption from the requirement to disclose the price to be paid for the warrants in recognition that it may not be possible for a warrant-issuer to specify the price of an equity warrant in a prospectus. The price may fluctuate from day to day, for example, on the basis of a pricing formula related to the price of the underlying security.
- 4.1.2 This exemption will be subject to the condition that the prospectus contains an explanation of the pricing procedure and a statement of how an investor may ascertain

the price at any time during the offer period.

## 4.2 First and Second Schedule of the Securities Regulations

4.2.1 The proposed notice will contain a list of matters, drawn for the most part from the First and Second Schedule of the Securities Regulations, that will be required to be disclosed in the prospectus in respect of the warrant-issuer. The Commission believes that the following clauses of the First Schedule and Second Schedule are relevant to the warrant-holders decision whether to invest in the equity warrants:

### 4.2.2

#### *First Schedule*

##### *Clauses*

- 5A *Restrictions on director's powers*
- 14 *Appointment and retirement of directors*
- 15 *Directors' interests*

#### *Second Schedule*

##### *Clauses*

- 1(1) -1(3) *Main terms of the offer*
- 2 *Name and Address of Offeror*
- 3 *Details of incorporation of Issuer*
- 4 *Guarantors including guaranteeing subsidiaries*
- 5 *Directorate and Advisers*
- 5A *Restrictions on Director's Powers*
- 7 *Summary of Financial Statements*
- 9 *Material Contracts*
- 11(1)(b) *Issue Expenses*
- 12 *Ranking of Securities*
- 14 *Others Terms of Offer and Securities*
- 33 *Places of Inspection of documents*

34 *Other material matters*

35(c) *Directors' statement*

4.2.3 In the case of covered equity warrants there should also be a description of the provisions of the trust deed generally in the manner prescribed for a trust deed relating to debt securities in clause 13 of the Second Schedule to the Securities Regulations.

#### 4.3 Other terms of offer and securities

4.3.1 The Commission considers that the following terms of the offer and terms of the securities should also be disclosed in a registered prospectus for equity warrants:

*minimum marketable parcels;*

*quantity of securities under each warrant;*

*manner of exercise of warrants;*

*exercise price;*

*exercise procedure;*

*expiry date;*

*clearing and settlement following exercise;*

*transfer of warrants;*

*delivery of underlying securities;*

*consequences of failure to deliver the underlying security; and*

*the effect of an "extraordinary event" (eg takeovers, bonus issues, share splits).*

4.3.2 In accordance with section 34(b) of the Securities Act warrant-issuers will need to ensure that a registered prospectus is not or does not become false or misleading in a material particular by reason of failing to refer to, or give proper emphasis to, adverse circumstances.

#### **4.4 Information relating to the issuer of the underlying securities**

- 4.4.1 As the underlying securities will be quoted on a recognised stock exchange the exchange will be expected to maintain a disclosure regime for the purposes of ensuring that all relevant information about the underlying securities is known to the market. Therefore the Commission does not propose to require as a stated condition of exemption that the warrant-issuer is able to ensure full and continuing disclosure about the underlying securities and the issuer of those securities, including, up to date financial statements.
- 4.4.2 However the Commission considers it desirable to include certain core information about the issuer of the underlying securities, for example, the jurisdiction and place of incorporation, details of the stock exchange on which the issuer is listed and on which the underlying securities are quoted, and the information prescribed in clause 13 of the First Schedule to the Securities Regulations for an offer of equity securities.

#### **4.5 Financial Information relating to warrant-issuer**

- 4.5.1 The warrant-holder will need to have access to financial information about the warrant-issuer during the life of the equity warrant to be able to assess the ability of the warrant-issuer to meet its obligations under the warrants on a continuing basis. Therefore it will be a condition of exemption that the warrant-issuer is obligated to ensure that throughout the warrant offer period and the life of the warrant it keeps its most recent audited financial statements readily available on request by the warrant-holder.
- 4.5.2 However it may be argued that when warrants are covered the financial statements are not relevant because the ability of the warrant-issuer to meet its obligations is not dependent on the warrant-issuer's solvency. We are considering excluding warrant-issuers of covered warrants from the condition to make their financial statements readily available. However this may require us to define "covered warrants" to be subject to a trust, the terms of which preclude the warrant-issuer or other person from exercising control over the transfer or disposal of the underlying financial instrument, and requiring

the trustee to take responsibility for ensuring that the warrant-issuer complies with the warrant-issuer's obligations in respect of the warrant. We would appreciate comments on this matter.

4.5.3 The warrant-issuer will also be required to send a copy of the most recent financial statements or a brief summary prepared in the manner prescribed in clause 7 of the Second Schedule to the Regulations, to all warrant-holders within 30 days of the financial statements being released. The summary will include a statement that the financial statements of the warrant-issuer have been released and warrant-holders can obtain a copy from the warrant-issuer.

#### **4.6 Financial Information relating to issuer of underlying securities**

4.6.1 If the underlying securities are New Zealand securities, issuers of the underlying securities are required, under the Financial Reporting Act 1993, to prepare financial statements which must be audited and registered with the Registrar of Companies. Copies are sent to all shareholders. Generally they are available through broking firms. Or as a last step, warrant-holders are entitled to obtain copies of these financial statements from the relevant District Registrar of Companies.

4.6.2 If the underlying securities are not New Zealand securities the financial reporting requirements applying to the issuer of the underlying securities may be different from the New Zealand requirements. Accordingly the financial statements of the issuer of the underlying securities may not be readily available to the warrant-holder and this will be required to be disclosed in the registered prospectus.

#### **4.7 Information relating to guarantor**

4.7.1 Where the performance by the warrant-issuer is guaranteed by a third party, it will be a condition of exemption that the terms of the guarantee are disclosed, in the manner prescribed for a guarantee of debt securities in clause 4 of the Second Schedule to the

Securities Regulations, in the registered prospectus, overseas offer document or accompanying document of an overseas offer document.

- 4.7.2 The issuer will need to commit to ensuring that the audited financial statements of the guarantor will be available on request, during the offer period and throughout the period of the warrant.

#### **4.8 Offer of warrants made in an overseas offer document**

- 4.8.1 A warrant-issuer which makes an offer in an overseas offer document will be exempt from the obligation under the New Zealand law to ensure that the subscriber has received a New Zealand prospectus, on the condition that an overseas offer document has been received by the New Zealand subscriber.

- 4.8.2 The exemption will be subject to certain conditions which will be similar to those contained in the Securities Act (Challenger Asset Management Limited and Others) Exemption Notice 1997, for example, that the offer document is prepared in accordance with equivalent rules in the specified overseas jurisdiction, that a copy of the offer and assorted documents is deposited with the Registrar of Companies at Wellington, that certain additional information is available on request during the offer period and throughout the life of the warrant and that the warrant is under public offer in the overseas jurisdiction of the warrant-issuer at the same time that it is under offer in New Zealand.

#### **4.9 Interests under Securities Amendment Act 1988**

- 4.9.1 The Commission observes that questions arise as to the nature of the warrant-holders obligation to disclose their interests in the underlying securities under the Securities Amendment Act 1988. This will vary depending on the terms of the warrant issue. We propose to examine these questions in the course of our current review of that Act. It may be some time before this review is complete having regard to the other priorities of

the Commission.

## **5 CONDITIONS OF EXEMPTIONS**

### **5.1 Ceiling**

5.1.1 The quality of a market in equity warrants is very dependent on the quality of the market, in particular, liquidity in the underlying securities. Liquidity in the warrants should not put at risk liquidity in the underlying securities. It has been argued to the Commission that benefits may arise if there is a ceiling on the number of warrants on issue at any one time.

5.1.2 This is a matter which the Commission expects the market regulators, the NZSE and other recognised exchanges, to address. The NZSE and ASC have said they consider it an appropriate policy for them to maintain a ceiling. This is not a matter for the exemption notice.

### **5.2 Spread of warrant-holders**

5.2.1 It has been argued to the Commission that benefits arise if there are explicit procedures for ensuring a spread of warrant-holders. This will assist in ensuring that an active market exists in equity warrants.

5.2.2 The Commission expects the NZSE and other recognised exchanges to maintain spread requirements in respect of exchange traded equity warrants. This is not a matter for the exemption notice.

### **5.3 Trustee**

5.3.1 The Commission considers that where an issuer states in the offer document that warrants

are covered a trustee should be appointed in respect of those covered warrants to hold a sufficient number of underlying securities throughout the term of the warrants to meet the exercise of all outstanding warrants.

- 5.3.2 The trustee should be a trustee corporation, a person approved by the Commission as a trustee under section 48 of the Securities Act, or in respect of an offer sourced from an overseas jurisdiction, a person empowered by the relevant rules of law to act as a trustee.

## **6 OTHER EXEMPTION NOTICES**

- 6.1 There is a possible overlap between this exemption notice and the notice applying to Australian Issuers and to Overseas Listed Issuers. It is intended to amend these two exemption notices so that the new exemption notice contains a complete statement of the nature and terms of all exemptions which are applicable to equity warrants.

**THE SECURITIES ACT (LISTED EQUITY WARRANT-ISSUERS)**

**EXEMPTION NOTICE 1996**

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

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NOTICE

**1. Title, commencement, and expiry--**

(1) This notice may be cited as the Securities Act (Listed Equity Warrant-Issuers) Exemption Notice 1997.

(2) This notice shall come into force on the day after the date of its notification in the Gazette.

**2. Interpretation** -(1) In this notice, unless the context otherwise requires, -

“The Act” means the Securities Act 1978:

“Covered equity warrant” means an equity warrant under the terms of which the warrant-issuer has secured that, a sufficient number of underlying equity securities to meet all its outstanding obligations to deliver securities under the issue of the warrant, are held by a trustee for the benefit of the warrant holders for the period of the warrant.

“Equity warrant” means a security offered to the public for subscription that -

- (a) confers on the warrant-holder the right to acquire and the warrant-issuer the obligation to deliver, at the option of the warrant-holder, an equity security or equity securities that, at the time of the offer, belongs to a class of securities that is -

(i) quoted on a recognised stock exchange; and

- (ii) issued by a person that is a party to a listing agreement with a recognised stock exchange and that is unrelated to the issuer of the underlying security; and
- (b) at the time of the offer is, or immediately after allotment will be, quoted on a recognised stock exchange.

“Overseas offer document” is defined in clause 4.

“Recognised stock exchange” means a stock exchange referred to in Schedule 1.

“Regulations” means the Securities Regulations 1983.

“Specified overseas jurisdiction” means a jurisdiction specified in Schedule 2.

“Trustee” means a trustee corporation, a person approved to act as a trustee under section 48 of the Securities Act, or in respect of an overseas company, a person empowered by relevant rules of law to carry on business as a trustee in respect of offers of equity warrants to members of the public.

“Underlying equity securities” means the equity securities in respect of which the warrant-holder has or will acquire a right or interest upon exercise of the equity warrant.

“Warrant-holder” means the holder of an equity warrant.

“Warrant-issuer” means the issuer of an equity warrant.

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

**3. Warrant-issuers exempt from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983 where the offer is made in a registered prospectus**

-(1)- The warrant-issuer and every person acting on its behalf are exempted from compliance

with the provisions of sections 33(2) and 33(3) of the Act and regulation 3 of the Regulations in respect of an offer of equity warrants.

(2) The exemption granted by subclause (1) is subject to the following conditions:

- (a) That whether the warrants are debt, equity or participatory securities the registered prospectus contains all of the information, statements, certificates and other matters specified in clauses 5A, 14 and 15 of the First Schedule to the Regulations and clauses 1(1)-1(3), 2-5A, 7, 9, 11(1)(b), 12, 14, 33, 34 and 35(c) of the Second Schedule to the Regulations that are applicable.
- (b) That the registered prospectus states the stock exchange on which the warrants are quoted or are to be quoted.
- (c) That the registered prospectus includes the following information about the issuer of the underlying equity securities:
  - (i) the jurisdiction and place of incorporation of the issuer;
  - (ii) the recognised stock exchange on the which the issuer is listed, and on which the securities are quoted; and
  - (iii) the information prescribed in clause 13 of the First Schedule to the Regulations in respect of the offer of securities.
- (d) That where the registered prospectus states or implies that the equity warrants to which it relates are covered equity warrants:
  - (i) a trustee has been appointed in respect of the equity warrants, and holds a sufficient number of securities, for the benefit of warrant-holders, throughout the term of the equity warrant to meet the warrant-issuer's obligation to deliver

securities as they arise on exercise of the equity warrants; and

- (ii) the registered prospectus contains a description of the provisions of the trust deed in the manner prescribed in clause 13 of the Second Schedule to the Regulations.

(e) That the registered prospectus contains:

- (i) a brief description of the principles and procedures used to calculate the subscription price for equity warrants; and

- (ii) a description of the formula for determining the amount payable in respect of equity warrants that have lapsed or expired; and

- (iii) a statement that the company will provide free of charge, at the request of a person to whom the offer is made, -

- (A) the subscription price for the equity warrants; and

- (B) the amount payable in respect of equity warrants that have lapsed or expired.

(f) [If the warrants are not covered,] that the most recent audited financial statements of the warrant-issuer, that comply with the Financial Reporting Act 1993, are contained in or accompany the prospectus.

(g) [If the warrants are not covered,] that the registered prospectus contains prominent statements -

- (i) That a copy of the warrant-issuer's most recent audited financial statements are available on request to any warrant-holder throughout the life of the equity warrant.

- (ii) That within 30 days of the most recent annual financial statements of the warrant-

issuer being released the warrant-issuer will send to all warrant-holders a copy of those statements or a brief summary containing the information prescribed in clause 7 of the Second Schedule to the Securities Regulations for debt securities. That summary will include a statement that the financial statements of the warrant-issuer are available to warrant-holders on request to the warrant-issuer.

- (h) If the underlying equity securities are quoted on the New Zealand stock exchange that the registered prospectus contains the following prominent statement:

That the issuer of the underlying equity securities is a company listed on the New Zealand stock exchange whose financial statements are expected to be readily available from the issuer, from a member of the stock exchange or from the relevant District Registrar of Companies.

- (i) If the underlying equity securities are not quoted on the New Zealand stock exchange that the registered prospectus contains the following prominent statements:

The underlying equity securities are not quoted on the New Zealand stock exchange. New Zealand resident investors may not have access to information concerning the issuer of the underlying equity securities, or the underlying equity securities, in the same way as investors have in relation to an issuer of underlying equity securities quoted on the New Zealand stock exchange.

The financial reporting requirements applying to the issuer of the underlying equity securities may be different from the New Zealand financial reporting requirements and the financial statements may not be readily available to the warrant-holder.

- (j) That the issuer of the underlying equity securities is a company which is incorporated in New Zealand or in a specified overseas jurisdiction.

- (k) If the warrant-issuer's obligations under the terms of the equity warrant is guaranteed by

a third party, that the registered prospectus includes a prominent statement that a copy of the guarantor's most recent financial statements, that comply with the Financial Reporting Act 1993 or relevant overseas financial reporting requirements, are available on request to any warrant-holder during the offer period and throughout the term of the equity warrant.

(3) The warrant-issuer and every person acting on behalf of the warrant-issuer are exempted from compliance with the provisions of section 37A(2) of the Act in respect of any offer of equity warrants.

**4. Meaning of "overseas offer document"** - For the purposes of this notice, the term "overseas offer document", in relation to an offer of equity warrants, means a document -

- (a) That contains an offer of equity warrants;
- (b) That, with the exception of statements that are included in, or that accompany, the document pursuant to clause 5(4), is identical to a document that is lodged or registered under the law of a specified overseas jurisdiction and that is signed by or on behalf of such persons (if any) as are required by that law to sign that document, or by virtue of an exemption or declaration by the relevant competent authority is not required to be lodged or registered under the law of specified overseas jurisdiction; and
- (c) By means of which it is lawful under the law of a specified overseas jurisdiction to make an offer of those equity warrants to the public; and
- (d) That contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (e) A copy of which has been deposited with the Registrar of Companies at Wellington

together with a copy of--

- (i) The certificate of incorporation of the warrant-issuer:
- (ii) The memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the warrant-issuer:
- (iii) Every document to which clause 5(4)(a) applies:
- (iv) Any trust deed relating to covered equity warrants:
- (v) Any certificate or other document evidencing lodgment or registration of the document with the relevant competent authority and/or evidencing any exemption or declaration by the relevant competent authority referred to in paragraph (b)(ii):
- (vi) Any document containing the statements required by clause 5(4):
- (vii) A certificate signed by a person authorised by the law of specified overseas jurisdiction referred to in paragraph (b) to give legal advice to the public that, as at the date of the certificate, all the terms and conditions have been complied with.

**5. Warrant-issuers exempt from compliance with certain provisions of the Securities Act 1978 where the offer is made in an overseas offer document** (1) Subject to subclauses (2) to (7), the warrant-issuer and every person acting on its behalf are exempted from compliance with the provisions of sections 33, 37, 37A, 38 and 38A of the Act in respect of an offer of equity warrants made in an overseas offer document.

(2) The exemptions granted by subclause (1) are subject to the condition that -

(a) The offer is made in, or accompanied by, an overseas offer document; or

(b) The offer is made in an advertisement that -

(i) refers to the overseas offer document; and

(ii) states that allotments of equity warrants shall be made in the manner specified

in the offer document and in the manner prescribed under the law of specified overseas jurisdiction in which the offer document is lodged or registered, or by virtue of an exemption or declaration by the relevant competent authority is not required to be lodge or registered under the law of the specified overseas jurisdiction; and

(iii) specifies the place or places at which the offer document may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent the offer documentation, or both; and

(iv) states that the offer contained in the advertisement is authorised or instigated by or on behalf of the warrant-issuer or prepared with the co-operation of, or by arrangement with, the warrant-issuer; and

(v) contains no statement referring to listing or intended listing on the New Zealand Stock Exchange other than a statement approved by the New Zealand Stock Exchange; and

(vi) complies with the provisions of the Act and the Regulations relating to advertisements (other than provisions compliance with which is exempted pursuant to subclause (1)), and for the purposes of this subparagraph, references in those regulations to the expression "registered prospectus" shall be construed as references to the overseas offer document.

(3) The exemption granted by subclause (1) is subject to the further condition that the issuer of the underlying equity securities is listed, and the underlying equity securities are quoted, on a recognised stock exchange.

(4) The exemption granted by subclause (1) is subject to the further conditions -

(a) That the overseas offer document contains, or is accompanied by a document that

contains a statement that the following documents may be inspected at the office of the Registrar of Companies at Wellington:

- (i) A copy of any material contract referred to in the offer document; or
- (ii) If the contract is not in writing, a copy of any memorandum containing particulars of the contract:
- (iii) If an exemption, order, declaration has been granted by the relevant competent authority in respect of the offer of equity warrants, a copy of that exemption, order, declaration; and

(b) That the overseas offer document contains, or is accompanied by a document that contains prominent statements -

(i) That the tax position in New Zealand applying in relation to the equity warrants may be different from the position applying in a specified overseas jurisdiction and the investor should seek independent tax advice before subscribing for the equity warrants; and

(ii) That investing in the equity warrants may carry with it a currency exchange risk; and

(iii) That the financial reporting requirements applying in New Zealand and those applying to the warrant-issuer may be different and the financial statements of the warrant-issuer may not be compatible in all respects with financial statements prepared in accordance with the Securities Act 1978 and the Financial Reporting Act 1993; and

(iv) That -

(A) Any offer and allotment of equity warrants will be governed by the overseas offer document and will be made in accordance with the laws of specified overseas jurisdiction; and

(B) The warrant-issuer may not be subject in all respects to New Zealand law; and

(v) The obligations of the warrant-issuer may not be enforceable in New Zealand courts; and

(vi) That the overseas offer document has not been registered in New Zealand under and in accordance with New Zealand law and may not contain all the information that a New Zealand registered prospectus containing an offer of the equity warrants would be required to contain; and

(vii) Of the general nature and effect of any exemption, order, or declaration that may have been granted by any overseas body in respect of any offer of equity warrants; and

(viii) [If the warrants are not covered,] that a copy of the warrant-issuer's most recent audited financial statements is, available on request to any holder of any equity warrants; and

(ix) That where the equity warrants are not quoted on the New Zealand Stock Exchange New Zealand resident investors may not have access to information concerning the warrant-issuer in the same way as investors have in relation to an issuer listed on the New Zealand Stock Exchange; and

(x) That where the underlying equity securities are not quoted on the New Zealand Stock Exchange New Zealand resident investors may not have access to information concerning the securities in the same way as investors have in relation to securities that are quoted on the New Zealand Stock Exchange.

(4) The exemptions granted by subclause (1) are subject to the further condition that at the same time as an offer of equity warrants is made or is open for acceptance in New Zealand, an offer

of equity warrants is also made and is open for acceptance in the specified overseas jurisdiction to which the overseas offer document relates.

(5) The exemptions granted by subclause (1) are subject to the further condition that where the overseas offer document states or implies that the equity warrants to which it relates are covered equity warrants:

- (i) a trustee has been appointed in respect of the equity warrants and holds a sufficient number of securities, for the benefit of warrant-holders, throughout the term of the equity warrant to meet the warrant-issuer's obligation to deliver securities as they arise on exercise of the equity warrants; and
- (ii) the overseas offer document or a document accompanying the overseas offer document contains a description of the provisions of the trust deed in the manner prescribed in clause 13 of the Second Schedule to the Regulations in respect of an offer of debt securities.

(6) The exemptions granted by subclause (1) are subject to the further condition that if the performance by the warrant-issuer is guaranteed by a third party the overseas offer document, or a document that accompanies the overseas offer document, must include a prominent statement that a copy of the guarantor's most recent financial statements, complying with the financial reporting requirements applying in specified overseas jurisdiction, are available to any warrant-holder during the offer period.

(7) The exemptions granted by subclause (1) are subject to the further condition that both the warrant-issuer and the issuer of the underlying equity securities are incorporated in New Zealand or in a specified overseas jurisdiction.

(8) The warrant-issuer and every person acting on its behalf is exempted from compliance with the provisions of regulations 11 to 19, 21-23 of the Regulations in respect of an offer of equity warrants by the warrant-issuer.

(9) Nothing in subclause (8) applies in respect of an advertisement referred to in clause 5(2)(b).

Dated at Wellington this th day of 1997.

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

[L.S.] E.H.Abernethy, Chairman.

SCHEDULE 1

New Zealand Stock Exchange

Australian Stock Exchange

SCHEDULE 2

Australia

England

Wales

Scotland

North Ireland

Germany