

# DRAFT FOR CONSULTATION

## **Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Amendment Regulations 2008**

Governor-General

### **Order in Council**

At Wellington this                      day of                      2008

Present:  
in Council

Pursuant to section 49 of the Securities Markets Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Commerce (made after consulting with the Securities Committee), makes the following regulations.

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	<b>New Schedule substituted</b>	

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## Regulations

### 1 Title

These regulations are the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Amendment Regulations 2008.

### 2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

### 3 Principal regulations amended

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

### 4 Interpretation

- (1) Regulation 3 is amended by revoking the definition of **disclosure notice** and substituting the following definition:

“**disclosure notice** means a notice in either form 1 or form 2, and includes a notice in either form that complies with regulation 17”.

- (2) Regulation 3 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**form 1** means the form of notice for initial disclosure that is set out in the Schedule
  - “**form 2** means the form of notice for ongoing disclosure that is set out in the Schedule
  - “**initial disclosure** means the disclosure required under section 19T(1) of the Act
  - “**ongoing disclosure** means the disclosure required under section 19T(2) of the Act”.
- 5 Persons who are not officers**  
Regulation 4(1) is amended by revoking paragraphs (b) to (d) and substituting the following paragraph:
- “(b) report directly to a person who reports directly to—
    - “(i) a board of directors; or
    - “(ii) the sole director of a public issuer if the public issuer has only 1 director.”
- 6 New regulation 5 substituted**  
Regulation 5 is revoked and the following regulation substituted:
- “**5 Directors and officers must complete disclosure notice**
- “(1) A director or officer of a public issuer who must make an initial disclosure must do so using a disclosure notice in form 1.
  - “(2) A director or officer of a public issuer who must make ongoing disclosure must do so using a disclosure notice in form 2.”
- 7 Regulation 6 revoked**  
Regulation 6 is revoked.
- 8 Regulations 6A, 6B, and 6C amended**  
Regulations 6A, 6B, and 6C are amended by inserting “in form 1” after “disclosure notice” in each place where it appears.

**9 Regulations 7, 8, 9, 10, and 11 amended**

Regulations 7, 8, 9, 10, and 11 are amended by inserting “in form 2” after “disclosure notice” in each place where it appears.

**10 Aggregation of multiple transactions in disclosure notice**

Regulation 12 is amended by revoking subclause (1) and substituting the following subclause:

- “(1) Multiple acquisitions and multiple disposals of relevant interests in securities may be disclosed in 1 disclosure notice in form 2, provided that all the acquisitions and disposals disclosed in the notice took place within the 5-trading-day disclosure period referred to in section 19T(2) of the Act.”

**11 Disclosure notice must be signed**

Regulation 14 is amended by adding the following subclauses as subclauses (2) to (4):

- “(2) However, a director or officer may authorise (by whatever means he or she wishes) another person (whether by name or by title) to sign the disclosure notice on his or her behalf.
- “(3) A disclosure notice that is signed on behalf of a director or officer—
- “(a) is treated (subject to evidence to the contrary) as having been signed by a person authorised by the director or officer; and
  - “(b) must be treated in all respects as if it had been signed by the director or officer.
- “(4) It is not an excuse for non-disclosure that the director or officer authorised another person to sign the disclosure notice on his or her behalf but the authorised person failed to sign it as authorised.”

**12 Persons to whom disclosure notice must be given**

Regulation 15 is amended by adding the following subclauses as subclauses (2) to (4):

- “(2) However, a director or officer may authorise (by whatever means he or she wishes) another person (whether by name or by title) to give the disclosure notice to the registered exchange and the public issuer on his or her behalf.

- “(3) A disclosure notice that is given on behalf of a director or officer—
- “(a) is treated (subject to evidence to the contrary) as having been given by a person authorised by the director or officer; and
  - “(b) must be treated in all respects as if it had been given by the director or officer.
- “(4) It is not an excuse for non-disclosure that the director or officer authorised another person to give the disclosure notice on his or her behalf, but the authorised person failed to give it as authorised.”

**13 Deviations from, and electronic form of, disclosure notice**

- (1) Regulation 17 is amended by omitting “as the notice set out in the Schedule” and substituting “as either form 1 or form 2”.
- (2) Regulation 17 is amended by repealing paragraph (c) and substituting the following paragraph:
  - “(c) use the same words as are used in form 1 or form 2, as applicable; and”.

**14 Exemption from 5 trading day requirement for ongoing offers**

Regulation 18 is amended by revoking subclauses (4) and (5) and substituting the following subclause:

- “(4) Multiple acquisitions and multiple disclosures of relevant interests in securities may be disclosed in 1 disclosure notice under regulation 12 (even if the acquisitions, the disclosures, or both did not take place within a 5 trading day period as required by regulation 12(1)), if—
- “(a) the relevant interests arise from securities that are acquired or disposed of under 1 or more ongoing offers; and
  - “(b) disclosure is made in accordance with subclause (2)(a) or (b).”

**15 Regulation 23 revoked**

Regulation 23 is revoked.

**16 New Schedule substituted**

The Schedule is revoked and the Schedule set out in the Schedule to these regulations is substituted.

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**Schedule**

r 16

**New Schedule substituted**

**Schedule**

r 3

**Forms**

**Form 1**

rr 3, 5(1), 6A, 6B, 6C, 17,  
23(5)

**Initial disclosure notice**

*Section 19T(1), Securities Markets Act 1988*

**Note:** Use this form to disclose the relevant interests in securities that a director or officer of a public issuer has in the public issuer or a related body corporate. The disclosure must be given within 5 trading days of—

- (a) the listing of the public issuer; or
- (b) the person's appointment as a director or officer.

Provide the information required under heading C for each type of security identified under heading B.

This notice must be signed either by the director or officer making the disclosure, or by a person authorised by the director or officer to sign on his or her behalf.<sup>1</sup>

**A** *Details of director or officer*

Name of director or officer of public issuer:

Name of public issuer:

Position held in public issuer:

**B** *Securities in the public issuer or any related body corporate in which director or officer has relevant interest*

Number, class, and type of securities:<sup>2</sup>

**C** *Nature of relevant interest and name of registered holder*

Nature of relevant interest in securities:<sup>3</sup>

Name of registered holder of securities:<sup>4</sup>

**D** *Date on which obligation to make this disclosure arose:<sup>5</sup>*

**E** *Signature*

Signature of director or officer:

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Schedule

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Schedule—*continued*

Form 1—*continued*

Date of signature:

*or*

Signature of person authorised to sign on behalf of director or officer:

Date of signature:

Name and title of authorised person:

**Notes**

- 1 Regulation 14.
- 2 Regulation 6B.
- 3 Regulation 6A.
- 4 Regulation 6A.
- 5 Regulation 6C.

Schedule—*continued*

## Form 2

rr 3, 5(2), 7, 8, 9, 10, 11,  
12, 17

## Ongoing disclosure notice

*Section 19T(2), Securities Markets Act 1988*

**Note:** Use this form to disclose all the acquisitions and disposals by a director of a public issuer of relevant interests in securities of the public issuer or of a related body corporate. The disclosure must be made within 5 trading days of the first acquisition or disposal disclosed in this notice.

Provide the information required under headings C and D for each type of security identified under heading B.

This notice must be signed either by the director or officer making the disclosure, or by a person authorised by the director or officer to sign on his or her behalf.<sup>1</sup>

**A** *Details of director or officer*

Name of director or officer of public issuer:

Name of public issuer:

Position held in public issuer:

**B** *Securities in public issuer or related body corporate to which this disclosure relates*Number, class, and type of securities:<sup>2</sup>**C** *Nature of relevant interest and name of registered holder*Nature of relevant interest in those securities:<sup>3</sup>Name of registered holder of those securities:<sup>4</sup>**D** *Details of acquisitions and disposals**If the relevant interests were acquired—*Date of acquisition:<sup>5</sup>Consideration paid for acquisition:<sup>6</sup>*If the relevant interests were disposed of—*Date of disposal:<sup>7</sup>Consideration received for disposal:<sup>8</sup>*Type of transaction*Describe the arrangement pursuant to which, or the circumstances in which, the acquisition or disposal took place:<sup>9</sup>**E** Total number of transactions this notice relates to:<sup>10</sup>

Schedule—*continued*

Form 2—*continued*

- F Date of last disclosure notice (whether in form 1 or form 2) by director or officer:<sup>11</sup>
- G *Signature*  
Signature of director or officer:  
Date of signature:  
*or*  
Signature of person authorised to sign on behalf of director or officer:  
Date of signature:  
Name and title of authorised person:

**Notes**

- 1 Regulation 14.  
2 Regulation 8.  
3 Regulation 7.  
4 Regulation 7.  
5 Regulation 9.  
6 Regulation 10.  
7 Regulation 9.  
8 Regulation 10.  
9 Regulation 11.  
10 Regulation 12(2).  
11 Regulation 13.

Clerk of the Executive Council.

**Explanatory note**

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

These regulations, which come into force on the 28th day after notification in the *Gazette*, amend the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003.

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The purpose of the regulations is to simplify the disclosure regime applying to directors and officers of public issuers. The measures to achieve this are as follows:

- narrowing the range of people caught by the definition of officer, so that it includes only second tier managers and above:
- setting out 2 separate forms in the Schedule, one for initial disclosure (form 1) and the other for ongoing disclosure (form 2):
- getting rid of the prohibition on disclosing both multiple acquisitions and multiple disposals on the same form, as long as all the acquisitions and disposals take place within a 5 trading day disclosure period:
- allowing multiple transactions to be recorded on the same form, so long as they all take place within a 5 trading day period:
- allowing persons authorised by the director or officer making the disclosure to sign and give the disclosure notice on behalf of the director or officer making it. However, the director or officer making the disclosure remains liable if the obligation to make disclosure in accordance with the regulations is not complied with.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*:  
These regulations are administered by the Ministry of Economic Development.

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