

Corporate Advisory Alert

August 2008

Amendments to Directors and Officers Disclosure Rules

On Thursday, 31 July the Ministry of Economic Development released draft regulations amending the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003. These are the regulations which deal with the obligation of directors and officers of a listed company to disclose relevant interests in securities of that company.

The Ministry's release says that the purpose of the amendments is "to reduce compliance costs associated with a relatively wide definition of "officer" and introduce some operational improvements to the Regulations".

The most important aspect of the proposed amendments is to narrow the class of "officers". The Securities Markets Act 1988 defines an "officer" as any person "who is concerned or takes part in the management of the public issuer's business" but allows for exclusions by regulation. At present, the regulations exclude people who do not:

- (a) report to the board; or
- (b) report to a person who reports to the board; or
- (c) report to a person referred to in (b); or
- (d) manage a "principal business unit, division, or function".

Thus, under the present law, an "officer" includes someone three reporting levels away from the board.

The amendment will delete categories (c) and (d) above. That means that only direct reports to the board (usually the CEO) and reports to that person, will be caught by the definition of "officer".

The other significant amendment is to permit directors and officers to authorise some other person to sign and file notices for them. That means that one person (for example a company secretary or general counsel) can be appointed to prepare, sign, and file notices on behalf of directors and officers. As might be expected, the amending regulations make it clear that it is not an excuse for failure to disclose by a director or officer that the authorised person failed to disclose.

The amendments will also:

- (a) introduce new forms;
- (b) liberalise the provisions as to reporting multiple acquisitions and relevant interests in one notice.

A copy of the amending regulations can be viewed at http://www.med.govt.nz/upload/60389/proposed_security_markets_amend.pdf

The Ministry of Economic Development has asked for submissions by 15 August 2008.

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