

Securities Act (Hercules Limited) Exemption Notice 2014

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority, being satisfied of the matters set out in section 70B(2) of that Act, gives the following notice.

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Notice

- 1 Title**
This notice is the Securities Act (Hercules Limited) Exemption Notice 2014.
- 2 Commencement**
This notice comes into force on 15 September 2014.
- 3 Revocation of this notice**
This notice is revoked on the close of 30 April 2015.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires—
Act means the Securities Act 1978
adjusted net asset schedule means a schedule showing the following details for each portfolio entity or portfolio business:
 - (a) net assets as at 31 March 2014;

- (b) adjustments made from time to time to net assets to calculate the number of specified securities that investors in portfolio entities or portfolio businesses will be entitled to as part of the proposed acquisition of such portfolio entities or portfolio businesses by Hercules; and
- (c) adjusted net assets (being the sum of net assets and adjustments thereto)

FRS-43 means the financial reporting standard known as Financial Reporting Standard No 43 (Summary Financial Statements) that has been approved under the Financial Reporting Act 1993

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

Hercules means Hercules Limited (company number 4904500)

International Financial Reporting Standards means—

- (a) International Financial Reporting Standards and International Accounting Standards that have been issued or adopted by the International Accounting Standards Board in accordance with the constitution of the International Accounting Standards Committee Foundation; and
- (b) final interpretations by the International Financial Reporting Standards Committee approved by the International Accounting Standards Board in accordance with that constitution

NZ IFRS means New Zealand Equivalents to International Financial Reporting Standards

portfolio business means, where a prospectus relating to an offer of specified securities contains a statement to the effect that Hercules or any subsidiary of Hercules intends to acquire (directly or indirectly) a business, that business

portfolio entity means, where a prospectus relating to an offer of specified securities contains a statement to the effect that Hercules or any subsidiary of Hercules intends to acquire (directly or indirectly) equity securities in an entity that will result in that entity becoming a subsidiary of Hercules, each such entity

pro forma financial statements means the unaudited pro forma special purpose consolidated financial statements for Hercules (comprising a statement of comprehensive income, statement of financial position, statement of cash flows, and statement of changes in equity and selected notes to those financial statements) in respect of the years ended 31 March 2013 and 31 March 2014, such financial statements to be prepared:

- (a) as if Hercules had acquired all of the portfolio entities and portfolio businesses on 31 March 2012 and commenced operations on 1 April 2012;

- (b) in accordance with the assumptions set out in the registered prospectus relating to the offer of specified securities; and
- (c) otherwise in accordance with the measurement and recognition requirements of generally accepted accounting practice in New Zealand and NZ IFRS but with the exception of certain disclosure requirements of generally accepted accounting practice in New Zealand and NZ IFRS

Regulations means the Securities Regulations 2009

specified securities means ordinary shares in Hercules.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption from regulation 26 of the Regulations

Hercules and every person acting on its behalf are exempted from regulation 26 in respect to advertisements relating to any offer of specified securities.

6 Conditions of exemption from regulation 26 of the Regulations

- (1) The exemption in clause 5 is subject to the conditions that any advertisement must not —
 - (a) state the amount of assets, or net assets, of any person or persons, other than the total assets, net assets or adjusted net assets:
 - (i) of Hercules and/or any portfolio entity or portfolio business; or
 - (ii) taken from the pro forma financial statements; or
 - (iii) set out in the adjusted net asset schedule; or
 - (b) state the amount of the total assets of Hercules or any portfolio entity or portfolio business without also stating with equal prominence the amount of the total liabilities of that entity or those entities; or
 - (c) state the amount of the total assets set out in the pro forma financial statements without also stating with equal prominence the corresponding amount of the total liabilities set out in the pro forma financial statements; or
 - (d) state the amount of the net assets or adjusted net assets, or the amounts of the total assets and total liabilities, of Hercules and/or any portfolio entity or portfolio business, except as provided in subclause (3) below; or
 - (e) state the amount of the net assets or adjusted net assets, or the amounts of the total assets and total liabilities, shown in the pro forma financial statements or adjusted net asset schedule, except as provided in subclause (3) below.

- (2) The exemption in clause 5 is subject to the further condition that any advertisement must not state the amount of adjusted net assets of Hercules and/or any portfolio entity or portfolio business or contain or refer to the adjusted net asset schedule, other than where the advertisement relates to an offer of specified securities in consideration for the acquisition by Hercules of any portfolio business or equity securities in any portfolio entity and where such statement is made in the context of describing:
- (a) the current or prospective capital structure of Hercules;
 - (b) the process of, or consideration relating to, Hercules' acquisition of the portfolio entities or portfolio business; or
 - (c) the number of specified securities to which a person or class of persons are entitled.
- (3) An advertisement may state the amounts referred to in subclauses (1)(d) and (e) if:
- (a) the amounts shown appear in:
 - (i) the pro forma financial statements; or
 - (ii) the adjusted net asset schedule; or
 - (iii) the most recent audited statement of financial position of the relevant entity and that statement is dated no earlier than 18 months before the date of distribution of the advertisement; or
 - (iv) an interim statement of financial position of the relevant entity contained or referred to in the registered prospectus relating to the specified securities; and
 - (b) the advertisement:
 - (i) states that the amounts have been taken from the pro forma financial statements or adjusted net asset schedule, states the date of the pro forma financial statements or adjusted net asset schedule and states that the amounts have been calculated as at that date; or
 - (ii) states the date of the statement of financial position, states that the amounts have been calculated as at that date, and states whether the amounts have been taken from audited or unaudited financial statements.
- (4) Subclause (1) does not prevent an advertisement from containing or referring to:
- (a) a statement of financial position that complies with generally accepted accounting practice; or
 - (b) a summary statement of financial position prepared in accordance with FRS-43; or

- (c) the pro forma financial statements; or
- (d) the adjusted net asset schedule, provided that with respect to the adjusted net asset schedule, the advertisement complies with the condition contained subclause (2) above.

7 Exemptions from clause 12(3)(d) and (e) of Schedule 1 of the Regulations

Hercules and every person acting on its behalf are exempted from clause 12(3)(d) and (e) of Schedule 1 of the Regulations in respect of any registered prospectus relating to an offer of specified securities in so far as those clauses apply to the intended acquisition by Hercules (or any subsidiary of Hercules) of any portfolio business or of equity securities in any portfolio entity.

8 Conditions of exemptions from clause 12(3)(d) and (e) of Schedule 1 of the Regulations

- (1) The exemption in clause 7 is subject to the conditions that the registered prospectus relating to the offer of specified securities contains the following information—
 - (a) summary financial statements (if practicable, in tabular form) for each portfolio entity or portfolio business in respect of the 5 accounting periods preceding the specified date that comply with clause 9(2) to (4) of Schedule 1 of the Regulations (which apply with any necessary modifications), provided that:
 - (i) the amounts in the summary financial statements in respect of a portfolio entity or portfolio business are only required to:
 - A. be taken from financial statements that comply with, and were registered under, the Financial Reporting Act 1993, if and to the extent that the applicable portfolio entity or portfolio business has actually prepared and registered such financial statements; or
 - B. be those numbers which would have appeared in financial statements registered under the Financial Reporting Act 1993 (if those financial statements had been registered), if and to the extent that the applicable portfolio entity or portfolio business has actually prepared such financial statements;
 - (ii) the summary financial statements in respect of a portfolio entity or portfolio business are not required to comply with the requirements of FRS-43 if and to the extent that the financial statements prepared for the portfolio entity or portfolio business from which the amounts in the summary financial statements are

taken did not include any information required by FRS-43;

- (b) for each portfolio entity or portfolio business that has prepared financial statements that comply with, and have been registered under, the Financial Reporting Act 1993, a reference to the latest such financial statements for that portfolio entity or portfolio business, the accounting period covered by those statements, and the date of registration (and, if Hercules so wishes, those financial statements);
- (c) the pro forma financial statements;
- (d) a statement of the basis of preparation of the pro forma financial statements, the key assumptions used in preparing those statements, and the source of the information on which those statements are based;
- (e) a statement that over 90% of the total tangible assets presented in the 31 March 2014 statement of financial position contained in the pro forma financial statements are derived from 31 March 2014 audited financial statements of portfolio entities or portfolio businesses or, for portfolio entities which have prepared audited financial statements for the year ending 30 September 2013, derived from unaudited special purpose financial statements for the 12 months to 31 March 2014;
- (f) a statement by the directors of Hercules that, in their opinion, the fact that the pro forma financial statements are unaudited is not material to the understanding of the offer of specified securities set out in the registered prospectus;
- (g) a clear and concise statement identifying the financial information usually required under clause 12(3)(d) and 12(3)(e) of Schedule 1 of the Regulations which has not been provided in the registered prospectus relating to the offer of specified securities in reliance on the exemptions contained in clause 7;
- (h) a clear and concise statement identifying the portfolio entities and/or portfolio businesses with respect to which the financial information referred to in subclause (g) above has not been provided;
- (i) a clear and concise statement as to why the financial information referred to in subclause (g) is not available and the effect of this;
- (j) a statement by the directors of Hercules that, in their opinion, not including the financial information referred to in subclause (g) in the registered prospectus relating to the offer of specified securities will not have a material adverse effect on subscribers for specified securities;

- (k) a clear and concise statement by the directors of Hercules setting out the reasons why Hercules considers it appropriate to provide the alternative financial information set out in the registered prospectus relating to the offer of specified securities, including why Hercules considers the information will be more useful in assessing the merits of the offer of specified securities;
 - (l) a clear and concise statement by the directors of Hercules that they consider the alternative financial information provided in the registered prospectus relating to the offer of specified securities to be the best available in the circumstances; and
 - (m) a clear and concise summary of the differences between the information that would be required to be contained in the registered prospectus under the Regulations and the information that is provided in the registered prospectus.
- (2) The exemptions in clause 7 are subject to the further conditions that—
- (a) the auditor's report contained in the registered prospectus relating to the offer of specified securities required by clause 28(1) of Schedule 1 of the Regulations states whether the amounts stated under subclause 8(1)(a) have been derived or taken from audited financial statements and whether or not the amounts have been correctly derived or taken; and
 - (b) the registered prospectus relating to the offer of specified securities contains a copy of the compilation report from Ernst & Young Transaction Advisory Services Limited to the directors of Hercules in relation to the pro forma financial statements.

9 Exemption from section 34(2)(a) of the Act

Hercules and every person acting on its behalf are exempted from section 34(2)(a) of the Act in so far as that clause requires a copy of the latest financial statements for each portfolio entity or portfolio business that are registered under the Financial Reporting Act 1993 and referred to in any registered prospectus relating to an offer of specified securities to accompany that prospectus when it is distributed by or on behalf of Hercules.

10 Conditions of exemption from section 34(2)(a) of the Act

The exemption in clause 9 is subject to the conditions that—

- (a) the registered prospectus relating to the offer of specified securities contains a reference to where the latest financial statements for each portfolio entity and portfolio business that are registered under the Financial Reporting Act 1993 and referred to in the registered prospectus may be obtained free of charge; and

- (b) Hercules will, on request of any person to whom Hercules offers specified securities, send to that person free of charge a copy of the financial statements that Hercules would have been required to distribute with the registered prospectus relating to the specified securities but for the exemption in clause 9.

Dated at Wellington this 12th day of September 2014.



Simone Robbers
Head of Primary Markets and Investor Resources
Financial Markets Authority

Statement of reasons

This notice comes into force on 15 September 2014 and is revoked on 30 April 2015.

This notice relates to an offer by Hercules Limited (**Hercules**) to acquire all of the shares in a number of entities (**portfolio entities**) and acquire the assets of certain businesses (**portfolio businesses**). Under the offer Hercules will offer to shareholders of the portfolio entities ordinary shares in Hercules in exchange for their shareholding in the respective portfolio entities, and to the holders of the assets in the portfolio businesses in exchange for those assets.

This notice also relates to a separate initial public offer by Hercules of ordinary shares in Hercules. It is intended that Hercules may be renamed prior to its initial public offer.

This notice exempts Hercules from clauses 12(3)(d) and (e) of Schedule 1 of the Securities Regulations 2009 (**Regulations**) in relation to any offer of ordinary shares in Hercules to enable Hercules to provide alternative financial information on the portfolio entities and portfolio businesses to be acquired (**acquisition exemption**). The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978 (**Act**), considers it appropriate to grant this acquisition exemption because—

- Hercules is unable to comply with clauses 12(3)(d) and (e) of Schedule 1 of the Regulations, because a number of the portfolio entities and portfolio businesses have not prepared sufficient historical financial information to enable summary financial statements for the last five years to be provided for the entities in the manner required by those clauses, and they are not required to have registered their financial statements under the Financial

Reporting Act 1993 and do not hold full audited financial statements for the latest year prepared in accordance with generally accepted accounting practice. The conditions of the exemption require Hercules to instead provide prospective subscribers with the best available alternative financial information in relation to the portfolio entities and portfolio businesses:

- the conditions of the exemptions require any prospectus for the offer of ordinary shares in Hercules to contain alternative information, including pro forma financial statements for Hercules for the years ending 31 March 2013 and 31 March 2014 prepared as if Hercules had acquired all of the portfolio entities and portfolio businesses on 31 March 2012 and commenced operations on 1 April 2012, to enable subscribers to make informed decisions about their investments:
- the conditions of the exemption also require Hercules to make various statements in the prospectus, including a statement of why they are unable to provide the historical information ordinarily required, that the alternative information is the best available information in the circumstances, why the alternative information will provide useful information to prospective subscribers, and the differences between the information required under the Regulations and the information contained in the prospectus:

The requirement to warn prospective subscribers that historical financial information relating to certain portfolio entities and portfolio businesses usually required is not available and a requirement to instead provide the best alternative information available, and to explain the basis and reasons for this information, means that there will be no significant detriment to subscribers. Further, in the circumstances that the acquisition exemption only provides relief from the requirement to provide historical information that is not available, and imposes conditions which require the provision of alternative information relevant to investors, FMA considers the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.

This notice also exempts Hercules from the usual requirements under regulation 26 of the Regulations which limit statements that can be made about assets in advertisements to the issuer (and certain other recognised persons), to enable references to the assets of the portfolio entities or portfolio businesses and also to include, and refer to information contained in, the pro forma financial statements and the adjusted net asset schedule (**advertisement exemption**). FMA after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this advertisement exemption because—

- the exemption from the usual requirements which limit statements able to be made about assets in advertisements to reference assets of the Hercules, to also enable references to the assets of the portfolio entities or portfolio businesses, is appropriate given that Hercules intends to acquire (either directly or indirectly) the assets of the portfolio entities and portfolio businesses:
- the exemption recognises that the pro forma financial statements will provide prospective subscribers with useful information about the effect of the acquisition by Hercules of the portfolio entities and portfolio businesses. This information is considered to be relevant to prospective subscribers when making informed decisions about any investment in Hercules:
- the exemption also recognises that the adjusted net asset schedule, which can only be referred to or contained in advertisements relating to the offer by Hercules to exchange ordinary shares in Hercules for the shareholdings in the portfolio entities or for the assets in the portfolio businesses, will provide prospective subscribers with important information to enable them to calculate their relative shareholding entitlements in Hercules:
- the conditions of the exemption, enabling a broader class of assets to be referred to, replicate the restrictions in regulation 26 of the Regulations about statements that can be made in any advertisement that reference assets to ensure the statements are balanced with respect to total value and liabilities:

In these circumstances, FMA considers that the exemptions will not cause significant detriment to subscribers and that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

This notice also exempts Hercules from section 34(2)(a) of the Act in respect of the distribution of the registered prospectus relating to an offer of ordinary shares in Hercules not being accompanied by the most recent financial statements for each portfolio entity or portfolio business that are registered under the Financial Reporting Act 1993 and referred to in the prospectus (**financial statements exemption**). FMA after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this financial statements exemption because—

- the exemption will provide relief from the costs associated with printing and distributing the full financial statements for a significant number of portfolio entities or portfolio businesses that are required to be referred to in the registered prospectus in circumstances where such financial statements are publicly available and sufficiently accessible:

- this exemption recognises that the pro forma financial statements and the summary financial statements for the relevant portfolio entities and portfolio businesses will be contained in the registered prospectus:
- the registered prospectus will be required to contain a reference to where copies of the registered financial statements for the portfolio entities and portfolio businesses may be obtained free of charge and Hercules will be required to send copies of those financial statements to investors free of charge on request:

In these circumstances, FMA considers that the exemptions will not cause significant detriment to subscribers and that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.
