

23 March 2005

Hon Pete Hodgson  
Minister of Commerce  
Parliament  
PO Box 18888  
WELLINGTON

Dear Minister

**Re: Notice of Intention to Declare Unlisted Subject to the Securities Markets Act.**

Business New Zealand would like to take the opportunity to briefly comment on the decision by the Minister of Commerce as at 15 December 2004 to declare Unlisted subject to the provisions of the Securities Markets Act. Business New Zealand disagrees with this decision.

**Background**

Unlisted has now been in existence for over one year. During that time we are aware that membership and trading activity has continued to grow, with a majority of the large New Zealand stockbrokers actively using the Unlisted facility. The increasing membership of Unlisted shows that there is a market for a facility that provides lower administrative and compliance costs with a robust and transparent platform for small-medium sized enterprises.

In comparison with registered exchanges, the figures we have analysed show that Unlisted is very small in terms of value and volume of trade. Market capitalisation is also minimal. This is because many of the issuers who have joined Unlisted are relatively small in size, which is the intended market Unlisted has positioned itself for.

**Concerns**

It has come to our attention that the benefits of having an unregistered exchange in New Zealand may not have been adequately taken into account by the Minister. Instead, potential concerns have been identified that we believe are incorrect.

The Minister has expressed concern that aspects of Unlisted's operations are sufficiently similar to a registered exchange that may cause confusion for investors. In turn, this could have implications for the integrity of New Zealand's securities market. However, we understand that Unlisted already takes significant steps to ensure potential investors understand Unlisted is not a registered exchange. The Unlisted website provides ample information regarding its unregistered status, including the implications of its position. Also, investors are required to sign a

disclaimer acknowledging the unregistered status of Unlisted, and we have heard that additional links will be added to Unlisted's website that will make the information unavoidable by visitors to the website. When combined, we believe these provisions are more than adequate so as not to lead to confusion.

In addition, Unlisted have publicly stated that no complaints surrounding confusion have been made of Unlisted. We view this as an endorsement by both shareholders and investors that they understand how Unlisted operates and are not confused about Unlisted's representation of its status.

Although there has been increasing moves in New Zealand towards international compliance of the public listed regulatory structure, regulation should not be enforced on a trading facility that provides smaller New Zealand enterprises with an important first step to raise capital for the sake of pushing an international platform. Although Unlisted issuers are not subject to the provisions of the Securities Markets Act, it is still subject to other regulatory provisions that provide protection for investors. We believe that a trading facility that is un-registered would not adversely affect or deter overseas or domestic investors.

## **Benefits**

We believe Unlisted provides a unique service within New Zealand's trading platform. It is the only transparent and robust option available to small-medium sized enterprises to provide a platform for trading without having to comply with the additional costs associated with a registered exchange listing. The closest exchange available in New Zealand other than Unlisted is the NZAX, which is a registered exchange. For those enterprises that are unable to meet the full requirements and costs of being registered, there is no other comparable option available. It is highly questionable whether most Unlisted members would be willing or able to migrate to any registered exchange. The only alternate left would be to revert to traditional over-the-counter trading practices, which provides considerable more risk to shareholders.

Unlisted also provides an important indirect benefit of increasing the depth and liquidity of New Zealand capital markets in general. We believe that small and growing companies in New Zealand often have limited opportunities to raise capital. Unlisted is an ideal outlet to raise capital without having to face the compliance costs associated with a registered exchange, which would otherwise be an impediment for smaller enterprises. Unlisted is also an ideal stepping stone towards progressing to a registered exchange listing, either in New Zealand or offshore.

## **Conclusion**

We do not believe the reasons outlined by the Minister are sufficient to warrant Unlisted becoming a registered trading facility. However, there are clear benefits of Unlisted remaining an unregistered exchange. Therefore, Business New Zealand believes Unlisted should not be subject to the provisions of the Securities Markets Act.

Again, we would like to thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a long horizontal stroke extending to the right.

Phil O'Reilly  
**Chief Executive**  
**Business New Zealand**