

MULTIPLEX FUNDS MANAGEMENT LIMITED

**APPLICATION FOR EXEMPTION UNDER
SECTION 81 OF THE ELECTRICITY INDUSTRY
REFORM ACT 1998**

RUSSELL McVEAGH

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Date of Application

1. 2004.

Applicant

2. The applicant is the Multiplex group of companies and the other entities specified in this application and referred to in Appendix 1 (collectively referred to as "**Multiplex**").

Introduction

3. Multiplex New Zealand Property Fund (through its sub-trust Multiplex Albert Street Landowning Trust, which, in turn, will act through its custodian Multiplex Funds Management Limited, which is appointed by the trustee of the trust, Multiplex Albert Street Landowner Pty Limited) proposes to acquire the property known as the South City Shopping Centre situated on Colombo Street, Christchurch together with two buildings situated at 573 - 579 Colombo Street, Christchurch (collectively referred to as "**Properties**"). The Properties are currently owned by Macquarie Goodman which has the benefit of an exemption.
4. The Properties are leased to third parties, and Multiplex entities will supply, and propose to supply in future, electricity to these tenants. The Properties comprise principally retail shopping outlets, with some commercial office units.

Application

5. Pursuant to section 81 of the Electricity Industry Reform Act 1998 ("**EIR Act**"), application is hereby made to the Commerce Commission for an exemption from the application of the EIR Act, in particular the ownership separation provisions of the EIR Act, as described in this application.
6. This application explains the relationship of the EIR Act to Multiplex's business and specifies the conditions on which Multiplex will conduct its business if the exemption is granted.

Ownership Structure

7. Multiplex New Zealand Property Fund ("**MNZPF**") is a new trust to be established. This will be an Australian registered managed investment scheme. It will have as its Responsible Entity, Multiplex Capital Limited ("**MCL**") which is 100% owned by Multiplex Limited. Multiplex Limited is a publicly listed Australian company as a stapled security such that each unit in the Multiplex Property Trust is "stapled" to a share in Multiplex

Limited and each investor holds a share in Multiplex Limited and a unit in Multiplex Property Trust and cannot deal separately with them. Roberts Family Nominee Pty Limited ("**RFL**") is a 37.77% security holder in Multiplex Limited and the Multiplex Property Trust.

8. By reason of Australian law, in acquiring the Properties, Multiplex Albert Street Landowning Trust ("**Landowning Trust**") will act through its custodian Multiplex Funds Management Limited ("**MFML**"). MFML is appointed as custodian pursuant to a custody agreement between MFML and Multiplex Albert Street Landowner Pty Limited ("**Trustee**"), as Trustee of the Landowning Trust. This requires the custodian to act in accordance with the instructions of the Trustee. Ninety-nine percent of the units in the Landowning Trust are held on behalf of the Multiplex Albert Street Investment Trust by its trustee, Multiplex Albert Street Investment Pty Limited. 100% of the units of Multiplex Albert Street Investment Trust are held by MNZPF through its custodian MFML.
9. A diagram of the ownership structure as described above is attached as Appendix 1.
10. At the time of settlement of the purchase of the Properties by MNZPF, the units in MNZPF will be held by the following entities:
 - (a) Multiplex Property Trust ("**MPT**"), which is expected to hold around 27.5% of the units;
 - (b) Acumen Property Securities Fund ("**ACPS Fund**"), which is expected to hold around 22% of the units. The responsible entity of the ACPS Fund is Acumen Capital Securities Limited; and
 - (c) Hawaiian Group, which is expected to hold around 50% of the units which will be held as to 20% by Hyde Park Management Limited and as to 30% by SPB Developments Pty Limited.
11. Hyde Park Management Limited ("**HPM**") is an Australian company that is part of the Hawaiian Group, a group of companies controlled by and ultimately beneficially owned by the Wen family.
12. SPB Developments Pty Limited ("**SPB Developments**"), is also an Australian company, and is a wholly owned subsidiary of Selangor Properties Berhad ("**SPB**"), a company listed in the top 100 companies on the Kuala Lumpur Stock Exchange. The Wen family is also involved in the operation of this company.
13. Further details of each of these are set out below. However, please note that the role of Hawaiian Group as a holder of units is intended to be short term only. Its units will be

redeemed as units in MNZPF are issued to the Australian public who will have an opportunity to subscribe for those units, and to Multiplex Tasman Property Fund ("MTPF") the units in which will be publicly subscribed by the New Zealand public.

Background of Hawaiian Group

14. HPM and SPB are both Australian companies. Further information on the Hawaiian Group can be found at www.hawaiian.com.au.
15. SPB Developments is a wholly owned subsidiary of SPB. SPB is a publicly listed company on the Kuala Lumpur Stock Exchange ("KLSE") and is, we understand, a top 100 company on that exchange.
16. SPB was incorporated in Malaysia in 1963 and listed that same year as a public company on the KLSE Main Board.
17. As mentioned above the role of the Hawaiian Group is short term only. As the Australian and New Zealand public subscribe for the units in MNZPF and MTPF respectively the units held by the SPM and HPM will be redeemed. This is expected to occur prior to the end of 2004. For this reason we have listed SPB and HPM as parties requiring exemption from cross-involvement but we do not expect them to require permanent exemption.
18. By reason of the short term nature of the interest of the Hawaiian group (analogous to that of an underwriter or financier) we have not provided further details of the ownership of HPM or SPB. However we would request that the exemption extend to those persons who exercise control over those entities or who through their holding of shares in SPB or Hyde Park would have an interest of in excess of 10% of the units in MNZPF.

Electricity supply

19. The electricity supplied to tenants of the Properties exceeds 2.5 GWh per annum. Multiplex (through the Trustee and/or MFML) will employ Mantech (NZ) Limited ("Mantech") to act as its property manager of the Properties. In respect of the supply of electricity to the Properties, Mantech, as Multiplex's agent, will have the following arrangement with the electricity retailer, Southpower:
 - (a) the electricity accounts are in Mantech's name;
 - (b) Southpower provides Mantech with an invoice for total electricity used at the Properties (including supply to tenants);

- (c) Mantech pays Southpower by direct debit;
- (d) Mantech then arranges (through a contractor) for the electricity metres of individual tenants to be read;
- (e) Mantech's contractor then produces invoices for tenants reflecting individual electricity consumption, plus an apportionment of common area cost and the contractor's fee; and
- (f) the invoices are then distributed to tenants for payment. A late fee of 10% is charged for payments not made within 30 days.

Embedded Electrical Wiring Systems

- 20. Electricity supplied to the Properties is conveyed by means of the existing embedded electrical wiring systems within the Properties. No charge is levied on the tenants for the use of the embedded wiring.

Common Services

- 21. Multiplex purchases electricity to run services in the common areas of the Properties such as lighting and central air conditioning systems. The cost of this electricity, along with general running expenditure (such as cleaning common areas), is recovered from the tenants as part of the operating expenditure charge.

Lease Clauses and Arrangements Relating to Electricity Supply

- 22. There is no obligation in any of the leases of the Properties for the tenants to purchase electricity supplied by Multiplex.
- 23. Multiplex's policy with tenants is to continue to act fairly and reasonably and provide the best service possible. Multiplex believes it will be offering the best service it can to tenants by negotiating with electricity retailers for lower electricity prices, and then passing on these savings to its tenants.

Application of the EIR Act

Electricity Lines Businesses

- 24. Section 4 provides that:
 - (1) For the purposes of this Act, "electricity lines business":
 - (a) means a business that conveys electricity by line in New Zealand; and

- (b) includes the ownership or operation, directly or indirectly, of lines in New Zealand or any other core assets of an electricity lines business.
 - (2) None of the following activities brings a person within subsection (1):
 - (a) conveying, together with its associates (if any), less than 2.5 GWh per annum; ...
25. The following entity is an electricity lines business under section 4 of the EIR Act:
- (a) Multiplex Albert Street Landowner Pty Limited because it:
 - (i) owns, as Trustee of the Multiplex Albert Street Landowning Trust lines that convey electricity in New Zealand, being the embedded electrical wiring systems at the Properties (section 4(1)(a) and(b)); and
 - (ii) is not exempt from the meaning of "electricity lines business" through section 4(2).
26. Section 7 provides that:
- (1) For the purposes of this Act, a person is involved in an electricity business if the person:
 - (a) carries on that business, either alone or together with its associates and either on its own or another's behalf; or
 - (b) exceeds the 10% threshold in section 8 in respect of that business; or
 - (c) has material influence over the business;
 and "involvement" has a corresponding meaning.
27. The electricity lines business identified in paragraph 16 above is involved for the purposes of section 7 of the EIR Act because it:
- (a) carries on its electricity lines business, either alone or together with its associates and either on its own or another's behalf (section 7(1)(a));
 - (b) exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in the electricity lines business;
 - (c) has material influence over the electricity lines business.
28. The following entities are also involved in the above electricity lines businesses:
- (a) Multiplex Albert Street Landowning Trust ("**Landowning Trust**") because as the 100% beneficial owner of the Properties it exceeds the 10% threshold in

section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));

- (b) Multiplex Funds Management Limited because as holder of the legal title to the Properties (its interest being custodian of Multiplex Albert Street Pty Limited) it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));
- (c) Multiplex Albert Street Investment Trust ("**Investment Trust**") because as the beneficial owner of 99% of the units in the Landowner Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over the Landowning Trust;
- (d) Multiplex Albert Street Investment Pty Limited because as holder (in its capacity as trustee of the Investment Trust) of 99% of the units in the Landowning Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over the Landowning Trust (section 7(1)(c));
- (e) Multiplex Limited because, as the 100% shareholder in Multiplex Funds Management Limited, 100% shareholder in Multiplex Capital Limited (the responsible entity of the Multiplex New Zealand Property Fund), and 72% shareholder in Acumen Capital Securities Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Landowning Trust (section 7(1)(c));
- (f) Multiplex New Zealand Property Fund because, as beneficial owner of 99% of the interest in the Investment Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (g) Multiplex Capital Limited because, as responsible entity of MNZPF exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Landowning Trust (section 7(1)(c));
- (h) Roberts Family Nominees Limited because, as the 37.77% shareholders in Multiplex Limited and unitholders in Multiplex Property Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return

rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));

- (i) Multiplex Property Trust because as the owner of the beneficial interest in 27.5% of the units in Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (j) Acumen Property Securities Fund because as the owner of the beneficial interest in 22% of the units in Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (k) Acumen Capital Securities Limited because as the responsible entity of Acumen Property Securities Fund it has a material influence over Landowning Trust (section 7(1)(c));
- (l) SPB Developments Pty Limited because, as holder of 30% of the units in the Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (m) Selangor Properties Berhad and the shareholders therein (from time to time) because, as the 100% shareholder in SPB Developments Pty Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Multiplex Albert Street Landowner Pty Limited (section 7(1)(c));
- (n) Hyde Park Management Limited and the shareholders therein (from time to time) because, as holder of 20% of the units in the Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Multiplex Albert Street Landowner Pty Limited (section 7(1)(c)).

Electricity Supply Businesses

29. Section 5 provides that:

- (1) For the purposes of this Act, "electricity supply business":
 - (a) means a business that:
 - (i) sells electricity in New Zealand ...
 - (c) includes the ownership or operation, directly or indirectly, of any core assets of an electricity retail business, which include:
 - (i) the customer data base relating to and used for the purposes of an electricity retail or electricity trading business; and
 - (ii) the benefit of a contract to sell electricity; ...
- (2) None of the following activities brings a person within subsection (1):
 - (a) selling or generating less than 2.5 GWh per annum;
 - (b) generating or selling electricity solely for its own consumption or for the consumption of its associates: ...

30. The following entity is an electricity supply business under section 5 of the EIR Act:

- (a) Multiplex Albert Street Landowner Pty Limited because it:
 - (i) sells electricity in New Zealand (section 5(1)(a)(i));
 - (ii) owns, directly, a customer data base relating to and used for the purposes of an electricity retail business (section 5(1)(c)(i)); and
 - (iii) owns, directly, the benefit of a contract to sell electricity (section 5(1)(c)(ii)); and
 - (iv) is not exempted from the meaning of "electricity supply business" through section 5(2);

31. The electricity supply business identified in paragraph 21 above is involved for the purposes of section 7 of the EIR Act because it:

- (a) carries on its electricity supply businesses, either alone or together with its associates and either on its own or another's behalf (section 7(1)(a));
- (b) exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in its electricity supply businesses (section 7(1)(b));
- (c) has material influence over its electricity supply business (section 7(1)(c)).

32. The following entities are also involved in the above electricity supply businesses:

- (a) Multiplex Albert Street Landowning Trust ("**Landowning Trust**") because as the 100% beneficial owner of the Properties it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));
- (b) Multiplex Funds Management Limited because as holder of the legal title to the Properties (its interest being custodian of Multiplex Albert Street Pty Limited) it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));
- (c) Multiplex Albert Street Investment Trust ("**Investment Trust**") because as the beneficial owner of 99% of the units in the Landowner Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over the Landowning Trust;
- (d) Multiplex Albert Street Investment Pty Limited because as holder (in its capacity as trustee of the Investment Trust) of 99% of the units in the Landowning Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over the Landowning Trust (section 7(1)(c));
- (e) Multiplex Limited because, as the 100% shareholder in Multiplex Funds Management Limited, 100% shareholder in Multiplex Capital Limited (the responsible entity of the Multiplex New Zealand Property Fund), and 72% shareholder in Acumen Capital Securities Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Landowning Trust (section 7(1)(c));
- (f) Multiplex New Zealand Property Fund because, as beneficial owner of 99% of the interest in the Investment Trust it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (g) Multiplex Capital Limited because, as responsible entity of MNZPF exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Landowning Trust (section 7(1)(c));
- (h) Roberts Family Nominees Limited because, as the 37.77% shareholders in Multiplex Limited and unitholders in Multiplex Property Trust it exceeds the

10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));

- (i) Multiplex Property Trust because as the owner of the beneficial interest in 27.5% of the units in Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (j) Acumen Property Securities Fund because as the owner of the beneficial interest in 22% of the units in Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (k) Acumen Capital Securities Limited because as the responsible entity of Acumen Property Securities Fund it has a material influence over Landowning Trust (section 7(1)(c));
- (l) SPB Developments Pty Limited because, as holder of 30% of the units in the Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Landowning Trust (section 7(1)(c));
- (m) Selangor Properties Berhad and the shareholders therein (from time to time) because, as the 100% shareholder in SPB Developments Pty Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Multiplex Albert Street Landowner Pty Limited (section 7(1)(c));
- (n) Hyde Park Management Limited and the shareholders therein (from time to time) because, as holder of 20% of the units in the Multiplex New Zealand Property Fund it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over Multiplex Albert Street Landowner Pty Limited (section 7(1)(c)).

Prohibited Cross-Involvements

33. Accordingly Multiplex seeks an exemption from the application of section 17 of the EIR Act in respect of the following entities with prohibited cross-involvements in relation to the Properties:
- (a) Multiplex Albert Street Landowning Trust;
 - (b) Multiplex Albert Street Investment Trust;
 - (c) Multiplex Albert Street Landowner Pty Limited;
 - (d) Multiplex Albert Street Investment Pty Limited;
 - (e) Multiplex Funds Management Limited;
 - (f) Multiplex Limited;
 - (g) Multiplex Capital Limited;
 - (h) Multiplex Property Trust;
 - (i) Multiplex New Zealand Property Fund;
 - (j) Multiplex Tasman Property Fund;
 - (k) Roberts Family Nominees Limited;
 - (l) Acumen Property Securities Fund;
 - (m) Acumen Capital Securities Limited;
 - (n) SPB Developments Pty Limited;
 - (o) Selangor Properties Berhad and its shareholders; and
 - (p) Hyde Park Management Limited and its shareholders.
34. In the case of Multiplex Limited and Multiplex Property Trust, as its stapled securities are traded on the ASX, such persons holding over 10% of the Securities in Multiplex Limited and Multiplex Property Trust will change from time to time.
35. In addition, as the units in MNZPF and MTPF will be subscribed by the Australian and New Zealand public, such persons holding over 10% of the units in MNZPF and MTPF will change from time to time.

36. It seems outside the contemplation of the EIR Act that an exemption will need to be sought, from time to time, for every person acquiring more than 10% of the securities in a publicly listed entity.
37. Any opportunities for parties who acquire more than 10% of securities in Multiplex Limited, Multiplex Property Trust, MNZPF or MTPF to defeat the purposes of the EIR Act would be significantly restricted if the conditions listed in paragraph 31 (b) below were adopted. Multiplex considers that, given these conditions, the granting of an exemption from section 17 of the EIR Act in respect of parties who may in the future acquire more than 10% of the securities in Multiplex Limited, Multiplex Property Trust, MNZPF or MTPF would not provide Multiplex with opportunities to inhibit competition in the national electricity market.¹
38. Accordingly, Multiplex requests that the Commission grants a "blanket" exemption to all holders, from time to time, of over 10% of the units in Multiplex Limited, Multiplex Property Trust, MNZPF and MTPF.²

Scope of the Application for Exemption

Part A: Permanent Exemption

39. Multiplex seeks a short term exemption under section 81 of the EIR Act from the application of section 17 of the EIR Act until such time as the Commission determines the substantive grounds for a permanent exemption.
40. Pursuant to section 81 of the EIR Act, Multiplex seeks a permanent exemption from the application of section 17 of the EIR Act.
41. In considering applications for an exemption under section 81 of the EIR Act, the Commission has stated that it will consider the following three questions. We address each question.

Question 1: Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?

42. Multiplex makes the following points:
- (a) Multiplex considers the relevant market is the national electricity retail market.

¹ Multiplex relies on the Commission's reasoning in decision number 514.

² Multiplex relies on the Commission's reasoning in decision number 514.

- (b) If the Commission is prepared to grant the application for exemption, Multiplex accepts that it should be on the following conditions:
- (i) Multiplex will not introduce a lines charge for use of, or related to, an electricity lines business (being the embedded wiring system) in relation to the supply of electricity to tenants of the Properties;
 - (ii) Multiplex will not prevent access, on reasonable terms, to its embedded wiring systems in the Properties to any electricity supply business wanting to supply tenants of the Properties;
 - (iii) Multiplex will provide all tenants of the Properties with sufficient information to enable them to assess competitive electricity supply options;
 - (iv) if Multiplex materially changes the contracts or arrangements with the tenants of the Properties in relation to the supply or conveyance of electricity, it will notify the Commission.

These steps will ensure that there is no opportunity for Multiplex to inhibit competition in the relevant electricity retail market. As tenants and other customers will be free to choose their supplier, competition is promoted between electricity suppliers, for the right to supply the tenants and other customers.³

- (c) Granting an exemption will also not create any real incentive for Multiplex to inhibit competition in the electricity retail market. Any perceived incentives are either extremely minimal and/or theoretical. The nature of competition in the commercial properties market is such that Multiplex is, and will continue to be, motivated to keep tenants' and other customers electricity costs as low as possible. Multiplex will want to promote competition which generally leads to lower prices. Multiplex also has a policy of acting fairly and reasonably in relation to its tenants and to inhibit competition is not in accordance with that policy.

Question 2: Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation activities from electricity lines businesses?

³

Multiplex relies on the Commission's reasoning in decision number 351A.

43. There is no threat of this occurring, because Multiplex is not involved in any generation activities.

Question 3: Would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between an electricity lines business and an electricity supply business which is not at arms length?

44. Multiplex accepts that if an exemption is granted the relationship between the electricity supply businesses and the electricity lines businesses will not be at arms length. Multiplex considers that if the Commission grants the application on the terms mentioned above, no anti-competitive consequences will arise from the absence of an arms length relationship because of the conditions that would form part of the exemption and the strong incentive on Multiplex as a property owner to minimise its costs to tenants and other customers.

Part B: Three month exemption to comply with ownership separation rules

45. If the application for a permanent exemption is declined, Multiplex applies for a three month exemption from the application of section 17 of the EIR Act (from the date of the Commission's decision to decline Part A of this application) to enable Multiplex to comply with the ownership separation rules of the EIR Act.
46. In order for Multiplex to cease being involved in either the electricity supply business or the electricity lines business, it will need time in which to:
- (a) restructure its current arrangements with electricity retailers, tenants and other customers so that it does not breach any relevant contracts; and
 - (b) ensure that the tenants or new electricity retailers alter the relevant electricity supply equipment if necessary (such as meters) to accommodate the change in electricity operations.

47. Multiplex expects that it will take three months to carry out these actions from the date of the Commission's decision to decline Part A of this application.

Part C: Future Business

48. Multiplex's property investment business involves the ongoing development, sale and purchase of properties and/or companies owning properties.

49. Section 30 of the EIR Act prohibits a person from increasing its involvement in an electricity business, which includes the lines and supply businesses. So, each time Multiplex acquires or develops a new property and/or company it will increase its involvement in an electricity lines business. In some circumstances Multiplex, by acquiring or developing a new property and/or acquiring a new company, may also be in breach of section 18 of the EIR Act (20% aggregate cross-ownership prohibition).
50. Secondly, if the newly acquired property and/or company sells more than 2.5 GWh of electricity per annum, Multiplex will have increased its involvement in the electricity supply business.
51. In either scenario Multiplex would need to seek an exemption from the Commission each time it acquires or develops another building, large or small.
52. Multiplex wishes to avoid having to seek an exemption each time it purchases or develops a new property and/or acquires a new company because of the compliance costs involved, and potential transactional delays, which could result otherwise.
53. Multiplex seeks an exemption in respect of any business or involvement or interest in relation to any future property investment, development and management activities that Multiplex might undertake and for that exemption to extend to any companies or entities related to Multiplex. If the Commission is prepared to grant the application for exemption, Multiplex accepts that it should be on the following conditions:
- (a) the terms and conditions as set out in paragraphs 28(b)(i)-(iv) above in relation to the exemption given to the cross-involved entities; and
 - (b) that Multiplex informs the Commission of the details of any future property investment and/or management activity, within 20 working days (as that term is defined in the Commerce Act 1986) from the day following the day it undertakes the activity, that is likely to breach the EIR Act and for which Multiplex and/or any other persons are likely to rely on the exemption.

Further Information

54. If the Commission requires any further information in relation to this application for exemption please contact either Russell McVeagh or Multiplex. The relevant contact details are listed below.

55. **Russell McVeagh contact details**

Solicitor acting: Greg Thompson/Ed Crook
Telephone: (09) 367 8083/(09) 367 8378

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56. **Multiplex contact details**

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Russell McVeagh
2004

DECLARATION

THIS APPLICATION is made by **Multiplex Funds Management Limited**

We hereby confirm that:

- (a) all information requested by the Commerce Commission has been supplied;
- (b) all information known to the applicant(s) which is relevant to the consideration of this application has been supplied to the Commerce Commission; and
- (c) all information supplied by the applicant(s) to the Commerce Commission is correct as at the date of this application.

The company undertakes to advise the Commerce Commission immediately of any material change in circumstances relating to the application.

Date: 2004

Signed by:

Director/Chief Executive Officer/Other (specify)

I am a Director/Officer of the company and am duly authorised to make this application.

APPENDIX 1
MNZPF OWNERSHIP STRUCTURE



