

# Hamilton Hindin Greene

## UNLISTED DISCLAIMER

1. **Trading facility only:** Unlisted is an internet facility provided by Efficient Market Services Limited ("EMS") for brokers to trade, on behalf of their clients, in securities of companies participating in Unlisted ("Unlisted Companies"). Unlisted does not provide any facility for capital raising.

2. **Unlisted not a registered exchange:** Unlisted is not a registered securities exchange or authorised securities exchange, or regulated under New Zealand securities markets law. Unlisted is an unregistered securities trading facility.

3. **You trade at your own risk:** If you choose to trade in the securities of Unlisted Companies, you do so entirely at your own risk. In particular:

companies traded on Unlisted will not be subject to the investor protection legislation that applies to companies listed on a registered exchange, such as the Takeovers Code (except for New Zealand incorporated Unlisted Companies with 50 or more shareholders and \$20 million or more of assets), the insider trading laws which apply to listed entities, continuous disclosure requirements, director relevant interest disclosure and substantial security holder requirements, nor are there any of the other protections for investors that are contained in the listing rules of a registered exchange;

EMS does not monitor or enforce compliance by Unlisted Companies with the law (including company and securities laws).

Further information about what the fact that Unlisted is not a registered exchange means for investors is given in clause 9 below.

4. **Not investment advice:** You should obtain independent investment advice before you make any investment decisions.

The Unlisted website ("the Website") provides general information only. The content of the Website is not intended to be investment advice and you should not

treat it as such. We have not considered the merits of, or the merits of investing in, the securities of, any Unlisted Company. We make no recommendation or endorsement regarding the Securities of, or investing in, any Unlisted Company and you should not treat the quotation of Securities on Unlisted as being a recommendation or endorsement by us.

5. **No responsibility in respect of brokers:** Trading on Unlisted is undertaken by certain licensed stockbrokers. You acknowledge and agree that EMS has no responsibility, and will not be held responsible in any way, for any act or omission of any broker. Without limitation, EMS:

is not liable for any failure by any broker to pay any money that is due to you, or any loss you may incur due to the negligence, fraud or insolvency of any broker;

does not provide any guarantee in respect of any broker;

has no responsibility for any investment advice provided by any broker.

Brokers are not the agents of EMS and have no authority to make representations on behalf of, or to bind, EMS.

6. **No responsibility for information posted by Unlisted Companies:** Unlisted Companies have the ability to post announcements and other information ("Information") on the Website. EMS does not in any way supervise, edit or control the content of such Information. Accordingly:

no representation or warranty is given as to the reliability, accuracy or completeness of such Information;

if you rely on such Information you do so entirely at your own risk;

you acknowledge and agree that EMS will not be held responsible in any way in respect of such Information.

7. **Exclusion of liability:** Neither EMS nor any of its directors, employees, agents or related companies

shall be liable in any way for any loss or damage of any kind (including direct, indirect or consequential loss, loss of profits, or special damage) howsoever arising (whether in negligence or otherwise) out of or in connection with:

the Website, information contained on or omitted from the Website, or the use of or inability to use the Website;

any decision made in reliance on any information contained on the Website;

any trading of, or decision not to trade, securities of Unlisted Companies,

subject to any rights you may have under the Consumer Guarantees Act.

In the case of goods or services supplied or offered by EMS, its directors, employees, agents or related companies, liability for breach of any implied warranty or condition which cannot be excluded is limited at EMS's option to either:

(a) the supply of the goods (or equivalent goods) or services again; or

the payment of the costs of having the goods (or equivalent goods) or services supplied again.

8. **Governing Law:** This disclaimer is governed by New Zealand law. You agree that any dispute arising from or in connection with this disclaimer is subject to the non-exclusive jurisdiction of the courts of New Zealand.

9. **What does the fact that Unlisted is not a registered exchange mean?**

As an unregistered trading facility, Unlisted is not subject to the same regulatory protections as a registered exchange.

Registered exchanges are required to have detailed rules relating to the governance and conduct of listed companies, and the conduct of participating brokers. Compliance with those rules is monitored and enforced by the exchange. Unlisted will not offer such protections.

The rules of registered exchanges are vetted, and can be disallowed, by the Minister of Commerce. Registered exchanges are also subject to a specific Securities Commission monitoring regime. No such vetting or monitoring applies to an unregistered trading facility such as Unlisted.

Companies listed on a registered exchange ("Listed Companies"), are subject to a number of requirements under the Securities Markets Act. Issuers on Unlisted are NOT subject to these requirements. In particular:

*Insider trading regime:* Trading by a person who, due to some connection with the Listed Company, has information not generally available is prohibited on a registered exchange. This is not the case on Unlisted. Directors of Unlisted companies will, however, be subject to the more limited insider trading restriction in the Companies Act.

*Continuous disclosure regime:* Listed Companies are required to inform the market of events and developments relevant to the price of the company's securities as they occur. Companies on Unlisted are not subject to this requirement under the Securities Markets Act.

*Director's and officers relevant interest disclosure:* Directors and officers of Listed Companies must promptly report their security dealings in the company. Companies on Unlisted are not subject to this requirement under the Securities Markets Act.

*Substantial security holder disclosure:* A person with an interest in 5% or more of the voting securities of a Listed Company must disclose that fact and any changes in their holding. This is intended to ensure disclosure of major interests and thereby to prevent abuse in transactions entered into by such persons. Companies on Unlisted are not subject to this requirement under the Securities Markets Act.

The Securities Commission oversees compliance of Listing Companies with the Securities Markets Act. This is not the case for companies on Unlisted. Companies on Unlisted will, however, be subject to Securities Commission oversight for other regulatory requirements (for example, compliance with the Securities Act).

Listed Companies are also automatically subject to the Takeovers Code. Unlisted companies will only be subject to the Takeovers Code if they are incorporated in New Zealand and have 50 or more shareholders and at least \$20 million in assets. The purpose of the Takeovers Code is to ensure that everyone concerned is fully informed and that a fair price should be paid for all shares acquired.

*I have read and understood this disclaimer and in consideration for EMS allowing me to trade (via a broker) using Unlisted, I agree in favour of EMS to be bound by the terms of this disclaimer.*

Witnessed by:

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Signature

\_\_\_\_\_  
Broker Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Broker name

\_\_\_\_\_  
Date

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Date