



**THE SECURITIES ACT (NZSE 10 INDEX FUND) EXEMPTION
NOTICE 1996**

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (NZSE 10 Index Fund) Exemption Notice 1996.

(2) This notice shall come into force on the day after the date of its notification in the *Gazette*.

2. Interpretation—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Securities Act 1978:

“Fund” means the Group Investment Fund numbered 2291 established under section 29 of the Trustee Companies Act 1967 by the trustee pursuant to the trust deed:

“The Regulations” means the Securities Regulations 1983:

“Specified participatory security” means a participatory security that is an interest in the fund:

“Third Schedule” means the Third Schedule to the Regulations:

“Trust deed” means the trust deed dated the 7th day of May 1996 entered into by the trustee and NZSE Index Management Limited relating to the establishment of the fund:

“Trustee” means the New Zealand Guardian Trust Company Limited.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

3. Certain persons exempt from sections 33 (3) and 37 (3) of the Securities Act 1978 in respect of offers of participatory securities—

(1) Subject to subclause (2) of this clause, every manager of the scheme to which the specified participatory securities relate and every person acting on its behalf are exempted from compliance with the provisions of sections 33 (3) and 37 (3) of the Act in respect of any offer of specified participatory securities.

(2) The exemption granted by subclause (1) of this clause is subject to the following conditions:

- (a) That the trust deed contains provisions specifying the matters set out in the Schedule to this notice; and
- (b) That the registered prospectus in respect of the offer of specified participatory securities contains—
 - (i) A description of the principal terms and conditions of the trust deed; and
 - (ii) A statement that the trust deed may be inspected without fee at a place (that is also stated) by any person who so requests; and
- (c) That the first registered prospectus in respect of the offer of specified participatory securities contains a statement by the trustee whether the trustee guarantees the repayment of the securities; and
- (d) That every subsequent registered prospectus in respect of the offer of specified participatory securities contains a statement by the trustee—
 - (i) That the offer of the securities complies with the trust deed; and
 - (ii) Whether the trustee guarantees the repayment of the securities; and
 - (iii) Whether the trustee is under any obligation to ascertain whether any breach of the terms of the trust deed or of the offer of the specified participatory securities has occurred; and
- (e) That any interim balance sheet, profit and loss statement, and statement of cash flows of the fund contained in the registered prospectus in respect of the offer of specified participatory securities pursuant to clauses 21 (2), 31 (2), and 33 (b), respectively, of the Third Schedule are audited; and
- (f) That the accounting records of the fund are audited at least once a year by a qualified auditor; and
- (g) That a copy of the last audited balance sheet (including every document required by law to be attached to it) relating to the fund is, within 2 months after the accounting records have been audited pursuant to paragraph (f) of this subclause,—
 - (i) Given or sent to every person who is, at the time the balance sheet is given or sent, the holder of specified participatory securities; and
 - (ii) Delivered to the Registrar.

4. Certain persons exempt from section 37A (1) (e) of the Securities Act 1978 in respect of offers of participatory securities—

(1) Subject to subclause (2) of this clause, every manager of the scheme to which the specified participatory securities relate and every person acting on its behalf are exempted from compliance with the provisions of section 37A (1) (e) of the Act in respect of any offer of specified participatory securities.

(2) The exemption granted by subclause (1) of this clause is subject to the following conditions—

- (a) That the registered prospectus contains an audited balance sheet, profit and loss statement, and statement of cash flows for the fund that comply with the Third Schedule; and
- (b) That no allotment of any specified participatory securities is made if the date of allotment would be more than 15 months after the date of the balance sheet contained in the registered prospectus relating to the securities.

5. Certain persons exempt from regulation 23 of the Securities Regulations 1983 in respect of offers of participatory securities—

(1) Subject to subclause (2) of this clause, every manager of the scheme to which the specified participatory securities relate and every person acting on its behalf are exempted from compliance with the provisions of regulation 23 of the Regulations in respect of any offer of specified participatory securities.

(2) The exemption granted by subclause (1) of this clause is subject to the following conditions:

- (a) That, on or before the date of the registered prospectus relating to the specified participatory securities, there has been delivered to the Registrar for registration an acknowledgment by the New Zealand Stock Exchange to the effect that all its requirements (other than those relating to the number of holders of the securities) for listing the fund and quoting the securities have been met; and
- (b) That the registered prospectus or any advertisement relating to the specified participatory securities does not include any statement relating to listing the fund or quoting the securities other than a statement in the following terms:

“Application has been made to the New Zealand Stock Exchange for permission to list the fund and quote the securities that are the subject of this offer and all requirements of the Exchange relating thereto that can be complied with on or before the date of the prospectus have been duly complied with.”

6. Certain persons exempt from provisions of Third Schedule to the Securities Regulations 1983 in respect of offers of participatory securities—Every manager of the scheme to which the specified participatory securities relate and every person acting on its behalf are exempted from compliance with the provisions of clauses 7 (5), 7 (6), and 10 (3) of the Third Schedule to the Regulations in respect of any offer of specified participatory securities.

SCHEDULE

Cl. 3

MATTERS TO BE SPECIFIED IN DEED OF TRUST

1. Investment of fund—The investments or classes of investment in which the assets of the fund may be invested.

2. Capital of fund—(1) Whether any limits as to number or amount apply to all specified participatory securities or to any class of specified participatory securities that have been or may be issued in respect of the fund and, if so, the nature of those limits.

(2) The liability of the holders of specified participatory securities to contribute to the fund before its winding up.

(3) Where there is a minimum amount of specified participatory securities that must be allotted before the commencement of the fund, a statement of that minimum amount.

3. Redemption and transfer of specified participatory securities—The terms relating to the redemption, transfer, and transmission of the specified participatory securities.

4. Winding up of the fund—(1) The circumstances in which the fund shall or may be wound up, and the procedure for winding up.

(2) The rights and liabilities of holders of specified participatory securities on, and in the course of, the winding up of the fund.

5. Meetings—The frequency of, procedure for convening and holding, the business to be conducted at, and the voting rights at, meetings of holders of specified participatory securities.

6. Trustee—(1) The terms relating to the appointment, remuneration, and, if any, removal from office of the trustee.

(2) The powers of the trustee, including any borrowing powers and any powers to delegate the management of the fund.

(3) The duties and liabilities of the trustee, including the duty to hold the assets of the fund according to the terms of the issue of the specified participatory securities.

7. Profits—The terms relating to the use or distribution of any profits of the fund.

Dated at Wellington this 10th day of May 1996.

The Common Seal of the Securities Commission was hereunto affixed in the presence of:

[L.S.]

E. H. ABERNETHY,
Chairman.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on the day after the date of its notification in the *Gazette*, exempts certain persons, subject to conditions, from compliance with provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of offers of participatory securities.

The securities are interests in a Group Investment Fund established under section 29 of the Trustee Companies Act 1967 the assets of which comprise securities issued by the companies that, from time to time, make up the New Zealand Stock Exchange 10 Index. The exemption applies to the persons who are managers (within the meaning of section 2 of the Securities Act 1978) of the scheme to which the securities relate.

Clause 3 exempts the managers of the scheme from sections 33 (3) and 37 (3) of the Securities Act 1978 in respect of offers of the securities.

Section 33 (3) prohibits the offering of participatory securities to the public unless a statutory supervisor has been appointed and a deed of participation has been entered into between the manager and the statutory supervisor.

Section 37 (3) prohibits the allotment of participatory securities unless, at the time of allotment, the statutory supervisor holds a written statement signed by the subscriber authorising the subscription.

Clause 4 exempts the managers of the scheme from section 37A (1) (e) of the Securities Act 1978 in respect of the allotment of the securities. The effect of the exemption is to extend the date by which the securities may be allotted from 9 months to 15 months after the date of the balance sheet contained in the registered prospectus for the securities.

Clause 5 exempts the managers of the scheme from regulation 23 of the Securities Regulations 1983.

Regulation 23 relates to the statements that may be included in a registered prospectus or advertisement relating to listing of securities on the New Zealand Stock Exchange.

Clause 6 exempts the managers of the scheme from clauses 7 (5) and (6) and 10 (3) of the Third Schedule to the regulations.

Clauses 7 (5) and (6) require a registered prospectus for participatory securities to contain a forecast statement of changes in financial position for a scheme.

Clause 10 (3) specifies the information that must be included in a registered prospectus for participatory securities where a business or equity securities have been acquired for the purposes of a scheme since the most recent balance date or where a business or equity securities are to be acquired.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 May 1996.

This notice is administered in the Securities Commission.