



**THE SECURITIES ACT (LOCAL AUTHORITY AND OTHER
VENTURE CAPITAL SCHEMES) EXEMPTION NOTICE 1994**

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

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NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 1994.

(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:

“Code of practice” means a code of practice for the regulation of offers of specified equity securities and specified participatory securities to the public for subscription that is—

(a) Administered by a scheme administrator; and

(b) Approved for the time being by the Commission:

“Pre-registration member” means a person who has not been admitted to full membership of a venture capital scheme, but who has been admitted to a category of pre-registration membership in respect of the scheme:

“The Regulations” means the Securities Regulations 1983:

“Scheme administrator” means a person named in the Schedule to this notice:

“Specified equity securities” means equity securities that are offered to the public for subscription under a venture capital scheme:

“Specified issuer” in relation to an offer of specified equity securities or specified participatory securities, as the case may be, means a person who—

(a) Has been admitted to full membership of a venture capital scheme; and

(b) Is bound by the rules of the venture capital scheme to comply with a code of practice:

“Specified participatory securities” means participatory securities that are offered to the public for subscription under a venture capital scheme:

“Venture capital scheme” means a scheme for the offering of equity securities and participatory securities to the public for subscription operated by a scheme administrator.

(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 exempted from compliance with provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of specified equity securities—(1) Subject to subclause (2) of this clause, every scheme administrator and every specified issuer is exempted from compliance with the provisions of sections 37, 37A, and 38 (a) to (c) of the Act and regulations 15 and 17 of the Regulations in respect of any offer of specified equity securities.

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

- (a) That the total amount raised by the specified issuer by the issue of the specified equity securities does not exceed \$1,000,000:
- (b) That the aggregate amount of capital and reserves of, and loans made by members or shareholders of the specified issuer to, the specified issuer does not at any time exceed \$2,000,000:
- (c) That before making any allotment of the specified equity securities to a subscriber, the subscriber has been supplied by the scheme administrator with—

(i) A copy of the most recent audited financial statements of the specified issuer, and, if the date of allotment would be more than 9 months after the date of the audited balance sheet of the specified issuer, interim financial statements of the specified issuer (being interim financial statements in respect of a period that is not more than 9 months after the period to which the audited financial statements relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the audited financial statements, but which need not be audited); or

(ii) A copy of the most recent financial statements of the specified issuer which need not be audited but which have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the New Zealand Society of Accountants and, if the date of allotment would be more than 9 months after the date of the balance sheet, interim financial statements of the specified issuer (being interim financial statements in respect of a period that is not more than 9 months after the period to which the most recent financial statements relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the most recent financial statements, but which need not be audited or reviewed by a chartered accountant):

- (d) That any document containing an offer of specified equity securities includes a statement in the following terms:

“NOTICE

Prospective investors are advised that the company, in making this offer, relies on an exemption granted by the Securities Commission from the obligation to disclose under the Securities Act 1978 and the Securities Regulations 1983 information that is material to the making of an informed investment decision. This offer document may therefore not contain the information normally required to be disclosed by the Securities Act 1978 and the Securities Regulations 1983 in a registered prospectus.

Prospective investors should accordingly be aware of the possibility of increased risk involved in investing in the securities and should seek professional advice before doing so.”:

- (e) That no allotment of any specified equity securities is made if the date of allotment would be more than 9 months after the date of the balance sheet or interim balance sheet referred to in subparagraph (i) or subparagraph (ii) of paragraph (c) of this subclause, as the case may be:
- (f) That the Commission has approved a code of practice in respect of the venture capital scheme and the offer is made in accordance with the code of practice:
- (g) That the scheme administrator makes a written report to the Commission on the operation of the venture capital scheme before the close of the 30th day of June in each year.

4. Certain persons exempted from compliance with provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of specified participatory securities—(1) Subject to subclause (2) of this clause, every scheme administrator and every specified issuer, not being a company, is exempted from compliance with the provisions of sections 33 (3), 37, 37A, and 38 (a) to (c) of the Act and regulations 15 and 17 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 the total amount raised by the specified issuer by the issue of the specified participatory securities does not exceed \$1,000,000:
- (b) That the aggregate amount of capital and reserves of, and loans made by holders of specified participatory securities to, the scheme to which the securities relate does not at any time exceed \$2,000,000:
- (c) That before making any allotment of the specified participatory securities to a subscriber, the subscriber has been supplied by the scheme administrator with—

(i) A copy of the most recent audited financial statements of the scheme, and, if the date of allotment would be more than 9 months after the date of the balance sheet in respect of the scheme, interim financial statements of the scheme (being interim financial statements in respect of a period that is not more than 9 months after the period to which the audited financial statements relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the audited financial statements in respect of the scheme, but which need not be audited); or

- (ii) A copy of the most recent financial statements of the scheme which need not be audited but which have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the New Zealand Society of Accountants and, if the date of allotment would be more than 9 months after the date of the balance sheet in respect of the scheme, interim financial statements of the scheme (being interim financial statements in respect of a period that is not more than 9 months after the period to which the most recent financial statements relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the most recent financial statements, but which need not be audited or reviewed by a chartered accountant);
- (d) That any document containing an offer of specified participatory securities includes a statement in the following terms:

“NOTICE

Prospective investors are advised that the issuer, in making this offer, relies on an exemption granted by the Securities Commission from the obligation to disclose under the Securities Act 1978 and the Securities Regulations 1983 information that is material to the making of an informed investment decision. This offer document may therefore not contain the information normally required to be disclosed by the Securities Act 1978 and the Securities Regulations 1983 in a registered prospectus.

Prospective investors should accordingly be aware of the possibility of increased risk involved in investing in the securities and should seek professional advice before doing so.”:

- (e) That no allotment of any specified participatory securities is made if the date of allotment would be more than 9 months after the date of the balance sheet or interim balance sheet referred to in subparagraph (i) or subparagraph (ii) of paragraph (c) of this subclause, as the case may be;
- (f) That the Commission has approved a code of practice in respect of the venture capital scheme to which the offer relates and the offer is made in accordance with the code of practice;
- (g) That the scheme administrator makes a written report to the Commission on the operation of the venture capital scheme before the close of the 30th day of June in each year.

5. Certain persons exempted from compliance with Part II of the Securities Act 1978 and regulations 15 and 17 of the Securities Regulations 1983 in respect of offers of equity securities and participatory securities—(1) Subject to subclause (2) of this clause, every pre-registration member, specified issuer, and scheme administrator is exempted from compliance with the provisions of Part II of the Act and regulations 15 and 17 of the Regulations in respect of the distribution of any document that—

- (a) Contains the following:

(i) A statement that the pre-registration member or specified issuer is considering making offers of securities to the public through a venture capital scheme and is seeking preliminary indications of interest from the public in subscribing for the securities:

(ii) A statement that no money is currently being solicited and that no applications for securities will be accepted or money received unless the subscriber has received a formal offer document completed and issued in accordance with the code of practice administered under the venture capital scheme:

(iii) A request that indications of interest be forwarded in writing to the scheme administrator:

(iv) A statement that no indication of interest will involve an obligation or commitment of any kind:

(b) If the document contains any other information, that information is limited to the following:

(i) The name and address of the pre-registration member or specified issuer:

(ii) A description of the securities intended to be offered including a brief description of any rights or privileges to be attached to them:

(iii) A statement of the total number of securities to be offered:

(iv) A brief description of the project or venture to which the securities relate:

(v) A statement as to the intended use of subscriptions:

(vi) The terms of the intended offer.

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

(a) That the document is dated and is not distributed to any person later than 6 months after the date of the document:

(b) That, in the case of a pre-registration member, the member has given a written undertaking to the scheme administrator that the member will not make any further offer of securities or distribute any further advertisement relating to such securities unless that member has completed a formal offer document in accordance with the code of practice administered under the venture capital scheme.

6. Revocation—The Securities Act (Local Authority Venture Capital Schemes) Exemption Notice 1993* is hereby revoked.

SCHEDULE

Canterbury Development Corporation
Palmerston North Enterprise Trust Board
Tai Tokerau Business Development Board

Dated at Wellington this 26th day of April 1994.

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

[L.S.]

P. D. McKENZIE,
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*, replaces the Securities Act (Local Authorities Venture Capital Schemes) Exemption Notice 1993. The notice is the same as that notice but now applies to the Tai Tokerau Business Development Board as well as the 2 bodies already named as scheme administrators.

The notice applies to offers of equity and participatory securities made in accordance with capital investment schemes administered under the control of certain local authorities and other bodies.

The notice exempts the body administering the scheme and the members of the scheme, subject to a number of conditions, from compliance with the prospectus requirements of the Securities Act 1978, regulations 15 and 17 of the Securities Regulations 1983, and, in the case of offers of participatory securities, from compliance with the participation deed and statutory supervisor requirements of the Act.

The notice also exempts the body administering the scheme, members of the scheme, and persons who have not been admitted to full membership of the scheme from compliance with Part II of the Act and regulations 15 and 17 of the regulations in respect of the distribution of certain documents that seek preliminary indications of interest by members of the public in subscribing for such securities.

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

Date of notification in *Gazette*: 28 April 1994.

This notice is administered in the Securities Commission.