



**SECURITIES ACT (LOCAL AUTHORITY AND OTHER VENTURE
CAPITAL SCHEMES) EXEMPTION NOTICE 1997**

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

NOTICE

1. Title, commencement, and expiry—(1) This notice may be cited as the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 1997.

(2) This notice comes into force on 1 October 1997.

(3) This notice expires on the close of 30 September 2002.

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

“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:

“Regulations” means the Securities Regulations 1983:

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

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

“Specified issuer”, in relation to any specified equity securities or specified participatory securities, 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. Exemption for specified equity securities—(1) Every scheme administrator and every specified issuer are exempted from sections 37 and 37A (2) of the Act and regulations 15 and 17 of the Regulations in respect of any specified equity securities.

(2) The exemption granted by subclause (1) 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 \$2,000,000;
- (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 statement of financial position 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 Institute of Chartered Accountants of New Zealand and, if the date of allotment would be more than 9 months after the date of the statement of financial position, 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 (at the front of the document) 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 document may therefore not contain all the information normally required to be disclosed by the Securities Act 1978 and the Securities Regulations 1983 in an investment statement or registered prospectus. Accordingly the risks associated with this investment may not be as fully disclosed as if there were an investment statement and registered prospectus. Prospective investors should consider seeking professional advice.”:

- (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 statement of financial position or interim statement of financial position referred to in subparagraph (i) or subparagraph (ii) of paragraph (c), 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 30 June in each year.

4. Exemption for specified participatory securities—(1) Every scheme administrator and every specified issuer, not being a company, are exempted from sections 33 (3), 37, and 37A (2) of the Act and regulations 15 and 17 of the Regulations in respect of any specified participatory securities.

(2) The exemption granted by subclause (1) 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 \$2,000,000:
- (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 statement of financial position 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 Institute of Chartered Accountants of New Zealand and, if the date of allotment would

be more than 9 months after the date of the statement of financial position 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 (at the front of the document) 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 document may therefore not contain all the information normally required to be disclosed by the Securities Act 1978 and the Securities Regulations 1983 in an investment statement or registered prospectus. Accordingly the risks associated with this investment may not be as fully disclosed as if there were an investment statement and registered prospectus. Prospective investors should consider seeking professional advice.”:

- (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 statement of financial position or interim statement of financial position referred to in subparagraph (i) or subparagraph (ii) of paragraph (c), 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 30 June in each year.

5. Exemption for equity securities and participatory securities—

(1) Every pre-registration member, specified issuer, and scheme administrator are exempted from sections 33 (3), 37, 37A, 38A, and 51 to 54B 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) 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.

SCHEDULE

Canterbury Development Corporation
 Hutt Employment Enterprise Development Trust, Porirua Business Development Society Limited, The Upper Hutt Promotion and Development Council Incorporated, The Wellington City Council, and Wellington Business Development Board, being an unincorporated body of persons known as "Four Cities Business Grow"
 Manukau City Council
 Nelson City Council
 Palmerston North Enterprise Trust Board
 Southland Economic Development Unit
 Tai Tokerau Business Development Board
 Taranaki Economic Development Trust
 Waitakere Enterprise Trust
 Whanganui Economic Development Corporation

Dated at Wellington this 29th day of September 1997.

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

[L.S.]

M. R. H. WEBB,
Member.

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 1 October 1997 and expires on 30 September 2002, replaces the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 1994. The notice is required as a result of the coming into force, on 1 October 1997, of new disclosure and other requirements under the Securities Act 1978.

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 conditions, from 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 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 the prospectus and investment statement requirements of the Act, regulations 15 and 17 of the Regulations, and the participation deed and statutory supervisor requirements of the Act in respect of the distribution of certain documents that seek preliminary indications of interest by members of the public in subscribing for such securities.

The notice is drafted on the basis that, where an exemption is given from a specified provision, it is not necessary to refer to other provisions that will not apply as a consequence of that exemption. For example, the exemption from section 37 of the Securities Act 1978 (the requirement to register a prospectus) means that sections 34, 37A (1) (c) and (d), and 39 to 44 of that Act will not apply.

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

Date of notification in *Gazette*: 30 September 1997.

This notice is administered in the Securities Commission.