



Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003

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

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			<hr style="width: 20%; margin: 0 auto;"/> Schedule Scheme administrators

Notice

1 Title

This notice is the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 March 2008.

4 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 (made under a venture capital scheme) 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 granted provisional registration in respect of the scheme

publicly available, in relation to a code of practice, means that,—

- (a) upon request to the scheme administrator (but subject to any reasonable restrictions that the scheme administrator may impose, so that not less than 2 hours in each working day is allowed for inspection), the code of practice must be open to inspection by the public, free of charge; and
- (b) upon request to the scheme administrator (but subject to any reasonable fee that the scheme administrator may impose), a copy of the code of practice must promptly be sent to any person who requests a copy; and
- (c) a copy of the code of practice must be published on the Internet

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 specified equity securities or specified participatory securities, or both, to the public for subscription operated by a scheme administrator under a code of practice.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption for specified equity securities

Every scheme administrator and every specified issuer are exempted from sections 37 and 37A(2) of the Act and regulation 17 of the Regulations in respect of any specified equity securities.

6 Conditions to clause 5

- (1) The exemption in clause 5 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 \$5,000,000;
 - (b) that the aggregate amount of capital and reserves of, and loans made by shareholders of the specified issuer to, the specified issuer does not at any time exceed \$5,000,000;
 - (c) that, before making any allotment of the specified equity securities to a subscriber, the specified issuer has given to the subscriber a copy of the most recent financial statements of the specified issuer that—
 - (i) have been audited; or
 - (ii) have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the Institute of Chartered Accountants of New Zealand; or
 - (iii) comply with the Financial Reporting Act 1993 except that they need not be audited, or reviewed by a chartered accountant;
 - (d) if the date of allotment of specified equity securities to a subscriber would be more than 9 months after the date of the financial statements of the specified issuer referred to in paragraph (c), that, before making any

allotment of specified equity securities to a subscriber, the specified issuer has given to the subscriber a copy of interim financial statements of the specified issuer (being interim financial statements for a period that is not more than 9 months after the period to which the financial statements referred to in paragraph (c) 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 financial statements referred to in paragraph (c), but which need not be audited or reviewed by a chartered accountant):

- (e) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(ii), that the financial statements include (at the top of each page) a statement in the following terms:

“WARNING

These financial statements have not been audited.”:

- (f) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(iii), that the financial statements include (at the top of each page) a statement in the following terms:

“WARNING

These financial statements have not been audited, or reviewed by an independent third party.”:

- (g) that any document containing an offer of specified equity securities includes (on the front of the document) a prominent 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 register a prospectus. Prospective investors should consider seeking professional advice.”:

- (h) 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 paragraphs (c) or (d), as the case may be:
- (i) that the offer of specified equity securities is made in accordance with a code of practice for the venture capital scheme:

- (j) that the code of practice referred to in paragraph (i) is publicly available for the period between the offer of specified equity securities and the allotment of those securities:
 - (k) that, in respect of specified equity securities offered after 31 March in a calendar year, the scheme administrator has sent to the Commission a written report on the operation of the venture capital scheme for the preceding calendar year.
- (2) The condition in subclause (1)(k) applies only in respect of specified equity securities offered after 31 March 2004.

7 Exemption for specified participatory securities

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 regulation 17 of the Regulations in respect of any specified participatory securities.

8 Conditions to clause 7

- (1) The exemption in clause 7 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 \$5,000,000:
 - (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 \$5,000,000:
 - (c) that, before making any allotment of the specified participatory securities to a subscriber, the specified issuer has given to the subscriber a copy of the most recent financial statements of the scheme that—
 - (i) have been audited; or
 - (ii) have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the Institute of Chartered Accountants of New Zealand; or
 - (iii) comply with the Financial Reporting Act 1993 except that they need not be audited, or reviewed by a chartered accountant:

- (d) if the date of allotment of specified participatory securities to a subscriber would be more than 9 months after the date of the financial statements of the scheme referred to in paragraph (c), that, before making any allotment of specified participatory securities to a subscriber, the specified issuer has given to the subscriber a copy of interim financial statements of the scheme (being interim financial statements for a period that is not more than 9 months after the period to which the financial statements referred to in paragraph (c) 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 financial statements referred to in paragraph (c), but which need not be audited or reviewed by a chartered accountant):
- (e) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(ii), that the financial statements include (at the top of each page) a statement in the following terms:
- “WARNING
- These financial statements have not been audited.”:
- (f) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(iii), that the financial statements include (at the top of each page) a statement in the following terms:
- “WARNING
- These financial statements have not been audited, or reviewed by an independent third party.”:
- (g) that any document containing an offer of specified participatory securities includes (on the front of the document) a prominent 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 register a prospectus. Prospective investors should consider seeking professional advice.”:
- (h) 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 paragraphs (c) or (d), as the case may be:
- (i) that the offer of specified participatory securities is made in accordance with a code of practice for the venture capital scheme:
 - (j) that the code of practice referred to in paragraph (i) is publicly available for the period between the offer of the specified participatory securities and the allotment of those securities:
 - (k) that, in respect of specified participatory securities offered after 31 March in a calendar year, the scheme administrator has sent to the Commission a written report on the operation of the venture capital scheme for the preceding calendar year.
- (2) The condition in subclause (1)(k) applies only in respect of specified participatory securities offered after 31 March 2004.

9 Exemption for equity securities and participatory securities

Every pre-registration member, specified issuer, and scheme administrator are exempted from sections 33(1) and 33(3) of the Act and regulation 17 of the Regulations in respect of the distribution of any document that contains the following:

- (a) 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:
- (b) 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 a code of practice in respect of the venture capital scheme:
- (c) a request that indications of interest be forwarded in writing to the scheme administrator:
- (d) a statement that no indication of interest will involve an obligation or commitment of any kind.

10 Conditions to clause 9

The exemption in clause 9 is subject to the following conditions:

- (a) that any other information contained in the document must be limited to the following:
 - (i) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached to them:
 - (ii) a statement of the total number of securities to be offered:
 - (iii) a brief description of the project or venture to which the securities relate:
 - (iv) a statement as to the intended use of subscriptions:
 - (v) the terms of the intended offer:
- (b) that the document is dated and is not distributed to any person later than 6 months after the date of the document:
- (c) 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 those securities unless that member has completed a formal offer document in accordance with a code of practice in respect of the venture capital scheme.

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Schedule Scheme administrators

Canterbury Development Corporation
Dunedin City Council Economic Development Unit
Enterprise Horowhenua Incorporated
Enterprise Northland
Enterprise Wanganui Incorporated
Enterprising Manukau
Gisborne District Council
Industrial Research Limited
Manukau City Council
Nelson City Council

**Securities Act (Local Authority and Other
Venture Capital Schemes) Exemption
Notice 2003**

2003/67

Explanatory note

Priority One, Tauranga
Rangitikei District Council
The Economic Development Association of New Zealand
Incorporated
Venture Southland
Waitakere Enterprise Trust
Wellington Regional Economic Development Trust.

Dated at Wellington this 26th day of March 2003.

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

[L.S.]

J. Diplock,
Chairperson.

Explanatory note

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

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 March 2008. It replaces the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 1998.

The notice applies to offers of equity and participatory securities made in accordance with venture capital investment schemes administered under an approved code of practice by 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 Act, regulation 17 of the Regulations, 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 investment statement requirements of the Act, regulation 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 those securities.

This notice is substantially similar to the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 1998, but the changes include the following:

- certain drafting changes that have been made to reflect current drafting practice:
- *clauses 5 and 7* no longer provide an exemption from section 33(1) of the Act or regulation 15 of the Regulations:
- *clauses 6(1)(j) and 8(1)(j)* require the code of practice to be made publicly available for the period between the offer and the allotment of securities:
- *clauses 6(1)(k) and 8(1)(k)* require a scheme administrator to send the Commission a written report on the operation of a venture capital scheme if securities are offered pursuant to that scheme after 31 March in a calendar year:
- *clause 9* no longer provides an exemption from sections 37, 37A, 38A, and 51 to 54B of the Act and regulation 15 of the Regulations:
- the list of scheme administrators in the *Schedule* has been amended.

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

Date of notification in *Gazette*: 27 March 2003.

This notice is administered in the Securities Commission.
