



Securities Act (Charitable and Religious Purposes) Exemption Notice 2003

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

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Notice

- Title**
This notice is the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003.
- Commencement**
This notice comes into force on 1 April 2003.
- Expiry**
This notice expires on the close of 30 November 2007.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

charitable organisation means a body corporate or unincorporate that exists for charitable, educational, religious, or recreational purposes (whether or not it also exists for other purposes); and includes a trade or professional union or association and a chamber of commerce

excluded security means a debt security that—

- (a) is exempted under section 5(1) to (4) or section 6(1) of the Act; or
- (b) is exempted from the application of sections 37 and 37A of the Act by virtue of an exemption notice given under section 5(5) of the Act (other than this notice or any corresponding previous notice); or
- (c) has not been offered in an offer of securities to the public

Regulations means the Securities Regulations 1983

religious organisation means a charitable organisation that exists for religious purposes, whether or not it also exists for other purposes

retirement village means a complex that provides, or is intended to provide, residential accommodation and any of the following services for persons in their retirement:

- (a) management and administrative services:
- (b) gardening, repair, and maintenance services:
- (c) hospital, nursing, or medical services, including accommodation:
- (d) emergency and security services:
- (e) shops and other services for the provision of goods to the person:
- (f) laundry services:
- (g) the provision of meals:
- (h) services or facilities for the recreation or entertainment of the person:
- (i) other services or facilities for the care or benefit of the person.

- (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 debt securities

Every charitable organisation and every person acting on its behalf are exempted from sections 33(2), 37, and 37A of the Act and regulation 17 of the Regulations in respect of any debt securities.

6 Condition of exemption for debt securities issued by religious organisations exclusively for religious purposes

The exemption in clause 5 is subject, in the case of debt securities issued by a religious organisation exclusively for religious purposes, to the condition that every subscriber for the security must receive, before subscribing for the security, an information document relating to the security that contains the information set out in clause 8.

7 Conditions of exemption for debt securities issued for other charitable purposes

The exemption in clause 5 is subject, in the case of debt securities other than securities issued by a religious organisation exclusively for religious purposes, to the conditions that—

- (a) every subscriber for the security must receive, before subscribing for the security, an information document relating to the security that contains the information set out in clause 8; and
- (b) at the time of the offer of those debt securities, the aggregate amount of the principal sums owing under outstanding debt securities (not being excluded securities or debt securities issued by a religious organisation exclusively for religious purposes) allotted by that organisation, and by any associated person of that organisation, must not exceed \$2,000,000; and
- (c) in the case of all issuers other than those named in the Schedule, no allotment of the debt securities is made if the aggregate amount of the principal sums that would be owing under outstanding debt securities (not being excluded securities or debt securities issued by a religious organisation exclusively for religious purposes) allotted by that organisation, and by any associated person of that organisation, during the 12-month period

ending immediately after the proposed allotment would exceed \$500,000.

8 Information document

The information document referred to in clauses 6 and 7 must contain the following:

- (a) a prominent statement at the front of the document in the following form:

“Important Notice

Prospective investors are advised that [*name of specified body*], in making this offer of securities, is not subject to the normal requirements to have a registered prospectus and an investment statement under the Securities Act 1978. This is because the Securities Commission has granted a general exemption from those requirements to all charitable organisations. The Securities Commission has not examined or approved this particular offer.

Accordingly, the risks associated with this investment may not be as fully disclosed in this document as they would be in an investment statement and registered prospectus.

The Securities Commission granted the general exemption on the basis that prospective investors in charitable organisations are not necessarily seeking a commercial return, but instead wish to support the [*charitable/religious*] purposes of the charitable organisation. The particular [*charitable/religious*] purposes of [*name of specified body*] are discussed in this document.

If the return sought is important to you, you should consider seeking investment advice.”; and

- (b) the information required by clauses 2, 9, 10, 11, and 12 of Schedule 3D of the Regulations; and
- (c) a description of the charitable or religious purposes for which the money paid by subscribers will be used; and
- (d) the terms and conditions of the offer of the security; and
- (e) any other information that is material to the offer of the security; and

- (f) a statement that it is a term of the offer of the debt securities that, on the request of the offeree, the charitable organisation must send, or cause to be sent, without fee and within 5 working days of receiving the request, to that offeree a copy of the most recent audited financial statements of the organisation that comply with the Financial Reporting Act 1993.

9 Exemption for participatory securities

- (1) Every charitable organisation and every person acting on its behalf are exempted from sections 33(3), 37, and 37A of the Act and regulation 17 of the Regulations in respect of any participatory securities of which that organisation is the issuer if, by the terms of the constitution, rules, or other document or instrument constituting or defining the constitution of that organisation or scheme, or governing the conduct of its affairs,—
 - (a) the holders of those securities do not have any interest or right to participate in any capital, assets, earnings, royalties, or other property of that organisation or scheme other than the rights listed in subclause (2); and
 - (b) the liability of the holders of those securities to make any payments to, or on behalf of, that organisation or scheme is limited to the amount of the fees or subscriptions that may be approved by a majority of the holders of participatory securities of that organisation or scheme in general meeting.
- (2) The rights listed for the purpose of subclause (1)(a) are all or any of the following:
 - (a) a right to share pro rata with all other holders of participatory securities in a distribution of any capital, assets, earnings, royalties, or other property of that organisation or scheme on a liquidation or winding up of that organisation;
 - (b) a right to use or enjoy any assets or other property of that organisation or scheme;
 - (c) a right to vote at any meeting of the holders of participatory securities.

10 Exemptions do not apply to retirement villages

Nothing in this notice applies to—

- (a) a debt security that secures the security holder's right to repayment of any sum that is—
 - (i) paid for the security holder's right to accommodation and services in respect of a retirement village to which the debt security relates; and
 - (ii) that is repayable to the security holder as a result of the termination of that right to accommodation and services;
- (b) a participatory security that confers on the security holder the right to accommodation and services in respect of a retirement village to which the participatory security relates.

**11 Securities Act (Charitable and Other Purposes)
Exemption Notice 1997 amended**

Clause 1(3) of the Securities Act (Charitable and Other Purposes) Exemption Notice 1997 (SR 1997/222) is amended by omitting the expression "31 March 2003", and substituting the expression "30 June 2003".

**12 Securities Act (Religious Organisations) Exemption
Notice 1997 amended**

Clause 1(3) of the Securities Act (Religious Organisations) Exemption Notice 1997 (SR 1997/247) is amended by omitting the expression "31 March 2003", and substituting the expression "30 June 2003".

cl 7(c)

**Schedule
Charitable organisations excluded from financial cap
in clause 7(c)**

Canterbury Development Corporation Limited
Ruapehu Alpine Lifts Limited

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, which comes into force on 1 April 2003 and expires on 30 November 2007, replaces the Securities Act (Charitable and Other Purposes) Exemption Notice 1997 and the Securities Act (Religious Organisations) Exemption Notice 1997.

The provisions of those notices have been carried forward with a number of changes of substance.

This notice—

- exempts charitable organisations from the trustee and trust deed, prospectus, and investment statement requirements of the Securities Act 1978 and the advertisement certificate requirements of the Securities Regulations 1983, subject to conditions, in respect of any debt securities of which the organisation is the issuer; and
- exempts charitable organisations from the statutory supervisor, deed of participation, prospectus, and investment statement requirements of the Securities Act 1978 and the advertisement certificate requirements of the Securities Regulations 1983, subject to conditions, in respect of any participatory securities of which the organisation is the issuer if the terms of the constitution or rules of the organisation comply with certain requirements.

The main changes are—

- the definition of **charitable organisation** no longer requires the organisation to be carried on exclusively for charitable purposes; and
- the financial cap tests require consideration of the principal sums owing under debt securities allotted by associated persons of the organisation as well as by the organisation itself; and

- the statement that must, as a condition of the exemption, be given to every subscriber for a debt security has been amended to specify that the exemption has been granted by the Securities Commission on the basis that prospective investors are not necessarily seeking a commercial return, but instead wish to support the charitable or religious purposes of the issuer; and
- the notice clarifies that the exemptions do not apply to most offers relating to retirement villages.

The expiry dates of the existing charitable and religious organisations exemption notices have been amended to 30 June 2003. This extension of those expiry dates allows issuers a smoother transition to this new notice.

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.
