



**SECURITIES ACT (GREAT BRITAIN COLLECTIVE INVESTMENT
SCHEMES) EXEMPTION NOTICE 1999**

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

ANALYSIS

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NOTICE

1. Title, commencement, and expiry—(1) This notice may be cited as the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999.

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

(3) This notice expires on the close of 30 September 2004.

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

“Act” means the Securities Act 1978:

“Authorised corporate director”, in relation to an investment company, means the authorised corporate director of the company within the meaning of the Financial Services Regulations:

“Authorised unit trust” means a unit trust scheme, within the meaning of section 75 (8) of the Financial Services Act 1986 (UK), in respect of which an authorisation order under section 78 of that Act has been made:

“Collective investment scheme” means an authorised unit trust or an investment company, as the case may be:

“Depositary” means a depositary appointed to hold the scheme property of an investment company in accordance with the ECA Regulations:

“ECA Regulations” means the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (UK):

“Financial Services Regulations” means the Financial Services (Open-Ended Investment Companies) Regulations 1997 (UK), made under the authority of the ECA Regulations:

“Investment company” means an open-ended investment company (within the meaning of section 75 (8) of the Financial Services Act 1986 (UK)) that is authorised under the ECA Regulations as an investment company with variable capital:

“Key features document” means a document that—

- (a) Contains information about specified securities; and
- (b) Complies with the rules of the Investment Management Regulatory Organisation Limited or the Personal Investment Authority, as the case may be, relating to key features documents:

“Manager”, in relation to an authorised unit trust, means a body corporate that is the manager of the unit trust:

“Overseas prospectus”,—

(a) In relation to an authorised unit trust, means a document—

- (i) That contains or refers to an offer of specified participatory securities; and
- (ii) That is identical to a document identified as Scheme Particulars that has been prepared, and a copy of which has been sent to the Financial Services Authority (UK), in accordance with the Regulated Schemes Regulations; and
- (iii) By means of which it is lawful, under the Regulated Schemes Regulations, to market specified participatory securities to the public in Great Britain; and
- (iv) That contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange, other than a statement that has been approved by the New Zealand Stock Exchange; and

(b) In relation to an investment company, means a document—

- (i) That contains or refers to an offer of specified equity securities; and
- (ii) That is identical to a document that has been prepared, and approved by the directors of the investment company, in accordance with the Financial Services Regulations; and
- (iii) By means of which it is lawful, under the Financial Services Regulations, to market specified equity securities to the public in Great Britain; and
- (iv) That contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange, other than a statement that has been approved by the New Zealand Stock Exchange:

“Regulated Schemes Regulations” means the Financial Services (Regulated Schemes) Regulations 1991 (UK), made under the authority of the Financial Services Act 1986 (UK):

“Regulations” means the Securities Regulations 1983:

“Specified equity securities” means shares in the share capital of an investment company:

“Specified participatory securities” means participatory securities in an authorised unit trust:

“Specified person” means,—

(a) In respect of specified participatory securities, the manager; and

(b) In respect of specified equity securities, the authorised corporate director and the investment company:

“Specified securities” means specified participatory securities or specified equity securities, as the case may be:

“Sub-fund” means, in relation to a collective investment scheme, a part of the scheme property that is held separately:

“Trustee”, in relation to an authorised unit trust, means a body corporate that is the trustee of the trust:

“Umbrella scheme” means an investment company or an authorised unit trust—

(a) Whose instrument of incorporation or trust deed, as the case may be, provides for sub-funds and for the pooling, in relation to each such sub-fund, of participants’ contributions and the profits or income out of which payments are to be made; and

(b) Whose participants are entitled to exchange rights in one sub-fund for rights in another.

(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. Exemptions—(1) Every specified person and every person acting on the specified person’s behalf are exempted, in respect of specified securities of which the specified person is the issuer, from,—

(a) In the case of specified participatory securities, section 33 (3) of the Act; and

(b) Sections 37 and 37A (2) of the Act; and

(c) Section 37A (1) (a) of the Act; and

(d) Section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and

(e) Sections 51 to 54 of the Act.

(2) Subclause (1) (d) applies in respect of an overseas prospectus or key features document only, and not in respect of any investment statement or other advertisement.

(3) Every specified person and every person acting on the specified person’s behalf are exempted from section 38 (a) of the Act to the extent that it requires an overseas prospectus or key features document to refer to an investment statement.

4. Key features document—(1) The exemption granted by clause 3 (1) (c) is subject to the condition that every person to whom an offer of specified securities is made in New Zealand receives, before subscribing for the securities, a key features document relating to those securities.

(2) If the condition specified in subclause (1) is not satisfied, and accordingly an investment statement is required, the exemptions granted by clause 3 (1) (a), (b), and (d) are subject to the condition that any investment statement that relates to the specified securities complies with

the provisions of the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to “registered prospectus” were references to the overseas prospectus.

5. Overseas prospectus—The exemptions granted by clause 3 (1) (a) to (d) are subject to the conditions that—

- (a) There is an overseas prospectus relating to the specified securities at the time that offers of those securities are made or are open for acceptance in New Zealand; and
- (b) It is a term of each offer of the specified securities made in New Zealand that a specified person will, within 5 working days of receiving a request from an offeree for a copy of the overseas prospectus relating to the securities concerned, without fee, send, or cause to be sent, to that offeree—
 - (i) A copy of the overseas prospectus; and
 - (ii) A copy of the most recent annual report, and (if more recent) the most recent half-yearly report, of the collective investment scheme; and
 - (iii) Copies of any documents that must accompany a copy of the overseas prospectus sent to a person in Great Britain in accordance with the law of England and Wales or the law of Scotland, as the case may be.

6. Documents to be deposited in Wellington—The exemptions granted by clause 3 (1) (a) to (d) are subject to the further condition that a copy of each of the following documents has been deposited with the Registrar of Companies at Wellington:

- (a) The overseas prospectus relating to the specified securities;
- (b) If an exemption, order, or declaration (other than the exemptions granted by this notice) has been granted by a competent authority in respect of the specified securities, a copy of that exemption, order, or declaration;
- (c) A certificate from a specified person certifying that a copy of the overseas prospectus has been sent to the Financial Services Authority (UK) in accordance with the Regulated Schemes Regulations or the Financial Services Regulations, as the case may be;
- (d) Any document that—
 - (i) Is issued by the Financial Services Authority (UK) or by a recognised self-regulating organisation within the meaning of the Financial Services Act 1986 (UK); and
 - (ii) Evidences that the manager and the trustee of the authorised unit trust, or the authorised corporate director and the depository of the investment company, as the case may be, are authorised persons for the purposes of the Financial Services Act 1986 (UK);
- (e) In the case of specified participatory securities,—
 - (i) The trust deed for the authorised unit trust and every amendment to the trust deed; and
 - (ii) The authorisation order made under section 78 of the Financial Services Act 1986 (UK) in respect of the authorised unit trust;

- (f) In the case of specified equity securities,—
- (i) The instrument of incorporation of the investment company; and
 - (ii) The authorisation order made under regulation 9 (1) of the ECA Regulations in respect of the investment company.

7. Information for New Zealand investors—(1) The exemptions granted by clause 3 (1) (a) to (d) are subject to the further condition that a document that complies with subclause (2) is contained in or accompanies—

- (a) Any overseas prospectus or key features document that is deposited with the Registrar of Companies at Wellington, or provided to any person to whom an offer of specified securities is made in New Zealand; and
- (b) Any investment statement that, because the condition specified in clause 4 (1) is not satisfied, relates to specified securities.

(2) That document must—

- (a) Include, to the extent appropriate, information or statements to the following effect, under the heading “Important Information for New Zealand Investors”:

- (i) That the issue or sale of the specified securities will be conducted in the manner specified in the overseas prospectus and in the manner prescribed by the law of England and Wales, or the law of Scotland, as the case may be; and

- (ii) That investors should satisfy themselves as to the tax implications of investing in the specified securities; and

- (iii) That investing in the specified securities may carry with it a currency exchange risk; and

- (iv) That the financial reporting requirements applying in New Zealand and those applying in respect of the collective investment scheme may be different and the financial statements of the collective investment scheme may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and

- (v) That a copy of the overseas prospectus relating to the specified securities and a copy of the most recent annual report, and (if more recent) the most recent half-yearly report, of the collective investment scheme is available from a specified person on request; and

- (vi) That, although a copy of the overseas prospectus and other documents have been deposited with the Registrar of Companies at Wellington, the overseas prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and

- (vii) That the key features document that is provided to persons to whom offers of the specified securities are made in New Zealand is intended to provide key information about the investment, but is not an investment statement and may not be comparable with an investment statement in all respects and may not contain all the information required to be contained in an investment statement; and

(viii) In the case of specified participatory securities, the names and addresses of the manager and the trustee of the authorised unit trust and a statement that the authorised unit trust, the manager, and the trustee may not be subject in all respects to New Zealand law; and

(ix) In the case of specified equity securities, the names and addresses of the authorised corporate director and the depositary of the investment company and a statement that the investment company, the authorised corporate director, and the depositary may not be subject in all respects to New Zealand law; and

(b) Include information or statements to the following effect, under the heading "Agreement as to Jurisdiction":

(i) That, in respect of a dispute concerning the contract for the specified securities, the manager (in the case of specified participatory securities) or the investment company and the authorised corporate director (in the case of specified equity securities)—

(A) Agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and

(B) Has instructed the New Zealand agent for service referred to in subparagraph (ii) to accept service of documents on its behalf; and

(C) Agrees that this statement is an agreement with each investor for the purposes of section 389 (1)(e) of the Companies Act 1993; and

(ii) The name and address of a person in New Zealand who has been appointed by the manager, or the investment company and authorised corporate director, as the case may be, to accept service in New Zealand of any documents on its behalf; and

(iii) That, despite the statements referred to in subparagraph (i), the contract in respect of the specified securities may not always be enforceable in New Zealand courts.

8. Offers to be made in Great Britain at same time—The exemptions granted by clause 3 (1)(a) to (d) are subject to the further condition that, at the same time as offers of the specified securities are made or are open for acceptance in New Zealand, the specified securities are marketed by the specified person for issue or sale in Great Britain in accordance with the law of England and Wales, or the law of Scotland, as the case may be.

9. Annual report to Commission—The exemptions granted by clause 3 (1)(a), (d), and (e), in respect of specified securities offered after 31 March in any calendar year, are subject to the further condition that, where the manager or authorised corporate director, as the case may be, has offered specified securities to the public in New Zealand during the preceding calendar year, the manager or authorised corporate director, as the case may be, has furnished to the Commission a written report in respect of the preceding calendar year that—

(a) Specifies each collective investment scheme and each sub-fund of an umbrella scheme in respect of which the manager or authorised

corporate director offered specified securities during that preceding calendar year; and

(b) Specifies, in respect of each such collective investment scheme and sub-fund,—

(i) The total amount of money raised in New Zealand in that preceding calendar year by the manager or authorised corporate director by the offer of the specified securities; and

(ii) The total amount of New Zealand raised funds under management by the manager or authorised corporate director as at the last day of that preceding calendar year; and

(c) States, in respect of each such collective investment scheme and sub-fund, whether the manager or authorised corporate director intends to continue to offer specified securities to the public in New Zealand subject to the exemptions granted by this notice.

Dated at Wellington this 3rd day of December 1999.

The Common Seal of the Securities Commission was 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 comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2004. The notice exempts managers of authorised unit trusts and open-ended investment companies established under the law of England and Wales or the law of Scotland, subject to conditions, from the following provisions of the Securities Act 1978 and the Securities Regulations 1983:

- sections 37 and 37A (2), which prohibit the allotment of securities offered to the public unless there is a registered prospectus relating to the securities, and which prescribe the minimum amount payable on application
- section 37A (1) (a), which prohibits the allotment of securities offered to the public unless subscribers receive an investment statement relating to the securities
- sections 38 (a) and 38A, and regulations 11 to 18, and 21 to 23, which contain requirements as to the content of advertisements and registered prospectuses
- sections 51 to 54, which relate to the keeping of registers and accounting records, and the sending of certificates to securities holders.

Managers of authorised unit trusts are also exempted from section 33 (3), which requires the appointment of a statutory supervisor, and a deed of participation, in relation to participatory securities.

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

Date of notification in *Gazette*: 9 December 1999.

This notice is administered in the Securities Commission.