



**THE SECURITIES ACT (COMMERCIAL BILL DEALERS)
EXEMPTION NOTICE 1995**

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

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Commercial Bill Dealers) Exemption Notice 1995.

(2) This notice shall come into force on the 1st day of January 1996.

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

“The Act” means the Securities Act 1978;

“Bill of exchange” means a bill of exchange within the meaning of section 3 of the Bills of Exchange Act 1908;

“Designated dealer” means a person named in the Schedule to this notice;

“The Regulations” means the Securities Regulations 1983;

“Second Schedule” means the Second Schedule to the Regulations.

(2) In Parts III and IV of this notice, the term “bank” means a registered bank (within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989) that has published a disclosure statement under section 81 of the Reserve Bank of New Zealand Act 1989.

(3) Any term or expression that is not defined in this notice, but that is defined in the Act, has the meaning given to it by the Act.

PART I

3. Designated dealers exempt from certain provisions of Securities Act 1978 and Securities Regulations 1983 in respect of offers of promissory notes endorsed by such dealers, bills of exchange, and other negotiable debt securities—(1) Subject to subclause (2) of this clause, every designated dealer, and every person acting on behalf of a designated dealer, are exempted from compliance with the provisions of sections 33 (2), 37A (1) (except paragraph (e)), 38 (b), and 41 (b) (i) of the Act and the provisions of clauses 1 (3), 1 (4), 2, 4 (2), 6 (2), 8 (3) (g), 11 and 14 of the Second Schedule, in respect of any offer of a debt security made by a designated dealer and which is—

(a) A promissory note which is endorsed (without negating or limiting liability) but not made by that designated dealer; or

- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by that designated dealer; or
 - (c) A negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which that designated dealer is directly or indirectly liable otherwise than as the original allotter.
- (2) The exemption granted by subclause (1) of this clause is subject to the following terms and conditions—
- (a) That there is, at the time of the offer of the debt security, a registered prospectus which—
 - (i) Relates to a class of debt security which includes the debt security to which subclause (1) of this clause applies; and
 - (ii) Contains all the information, statements, certificates, and other matters specified in the Second Schedule that are applicable; and for the purposes of this paragraph a reference in the Second Schedule to the term “issuer” shall be read and construed as a reference to the designated dealer; and
 - (iii) Has been signed by every person who, at the time when the prospectus was delivered to the Registrar for registration under the Act, was a director of that designated dealer or an agent or that director duly authorised in writing; and
 - (b) That copies of the registered prospectus relating to the debt security are on display and available to the public during normal business hours at each place of business of the designated dealer and its agents at which offers of the debt security are made; and
 - (c) That at the date of allotment, the registered prospectus is not known by the designated dealer, or any director of the designated dealer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

PART II

4. Designated dealers exempt from certain provisions of Securities Act 1978 and Securities Regulations 1983 in respect of offers of promissory notes made by such dealers and deposits—

(1) Subject to subclause (2) of this clause, every designated dealer, and every person acting on behalf of a designated dealer, are exempted from compliance with the provisions of sections 37A (1) (except paragraph (e)), 38 (b), and 41 (b) (i) of the Act and the provisions of clauses 1 (3), 1 (4), 8 (3) (g), 11, and 14 of the Second Schedule, in respect of any offer of a debt security made by a designated dealer and which is either—

- (a) A promissory note made by that designated dealer; or
- (b) A deposit that is, or is to be, made with that designated dealer.

(2) The exemption granted by subclause (1) of this clause is subject to the following terms and conditions,—

- (a) That there is, at the time of the offer of the debt security, a registered prospectus which—
 - (i) Relates to a class of debt security which includes the debt security to which subclause (1) of this clause applies; and

(ii) Contains all the information, statements, certificates, and other matters specified in the Second Schedule that are applicable; and for the purposes of this paragraph a reference in the Second Schedule to the term “issuer” shall be read and construed as a reference to the designated dealer; and

(iii) Has been signed by every person who, at the time when the prospectus was delivered to the Registrar for registration under the Act, was a director of that designated dealer or an agent of that director duly authorised in writing; and

- (b) That copies of the registered prospectus relating to the debt security are on display and available to the public during normal business hours at each place of business of the designated dealer and its agents at which offers of the debt security are made; and
- (c) That at the date of allotment, the registered prospectus is not known by the designated dealer, or any director of the designated dealer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

PART III

5. Application of this Part of the notice—This Part of this notice applies to any offer of a debt security which is—

- (a) A promissory note which is endorsed (without negating or limiting liability), but not made, by a bank; or
- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by a bank; or
- (c) Any negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which a bank is directly or indirectly liable otherwise than as the original allotter.

6. Banks exempt from certain provisions of Securities Act 1978 in respect of offers of debt securities to which this Part applies—Every bank, and every person acting on its behalf, are exempted from compliance with the provisions of sections 33 (2), 37, 37A, 38, 39 to 44, 44B to 52, and 54 of the Act in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

7. Banks exempt from regulations 14 (1) and 17 of Securities Regulations 1983 in respect of offers of debt securities to which this Part applies—(1) Every bank, and every person acting on its behalf, are exempted from compliance with the provisions of regulation 14 (1) of the Regulations in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) Subject to subclauses (3) and (5) of this clause, every bank which, and every other person who, distributes an advertisement to the public containing an offer of debt securities to which this Part of this notice applies made by that bank are exempted from compliance with the provisions of regulation 17 of the Regulations in respect of the distribution of that advertisement.

(3) The exemption granted by subclause (2) of this clause is subject to the condition that a certificate that complies with subclause (4) of this

clause has been completed in respect of the advertisement at the time that the advertisement is distributed to the public.

(4) A certificate for the purposes of subclause (3) of this clause shall be in the form set out in the Fourth Schedule to the Regulations and shall be signed—

- (a) Where the bank has only one director resident in New Zealand, by that director; or
- (b) By 2 persons being—
 - (i) Directors of the bank; or
 - (ii) Executive officers of the bank authorised by the directors of the bank to sign such certificates; or
 - (iii) A director and an executive officer of the bank who is authorised by the directors of the bank to sign such certificates.

(5) The exemption granted by subclause (2) of this clause is, in the case of a bank, subject to the condition that the certificate is held by the bank for at least 12 months from the date of the last distribution of the advertisement to which it relates.

(6) Nothing in subclauses (2) to (5) of this clause limits or affects regulation 17 (3) of the Regulations; and for the purposes of this subclause a reference in regulation 17 (3) of the Regulations to the term “issuer” shall be read and construed as a reference to the bank.

PART IV

8. Persons allotting debt securities referred to in Parts I and III exempt from certain provisions of Securities Act 1978—Every person (not being a designated dealer or a bank) who allots or is an issuer of a debt security referred to in Part I or Part III of this notice is exempted from compliance with the provisions of sections 33 (2), 37 (1), and 37A (1) of the Act.

9. Revocation—The Securities Act (Commercial Bill Dealers) Exemption Notice 1993* is hereby revoked.

SCHEDULE

UDC Finance Limited
UPC Securities Limited

Dated at Wellington this 17th day of November 1995.

The Common Seal of the Securities Commission was hereunto 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, which comes into force on 1 January 1996, replaces the Securities Act (Commercial Bill Dealers) Exemption Notice 1993.

Parts I and II of the notice continue, in the same terms, the exemptions contained in Parts I and II of the existing notice for designated dealers to which the notice applies. Part IV continues the exemption contained in Part III of the existing notice for persons who issue or allot securities referred to in Part I of that notice.

Part III of the notice exempts registered banks from sections 33 (2), 37, 37A, 38, 39 to 44, 44a to 52, and 54 of the Securities Act 1978 in respect of any offer of a debt security made by the registered bank and which is—

- (a) A promissory note which is endorsed (without negating or limiting liability) but not made by that registered bank; or
- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by that registered bank; or
- (c) A negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which that registered bank is directly or indirectly liable otherwise than as the original allotter.

It also exempts registered banks from regulations 14 (1) and 17 of the Securities Regulations 1983 in respect of offers of such securities.

Part III of the notice replaces Part II of the Securities Act (Banks) Exemption Notice 1988. Part III will apply, initially, to registered banks that comply with section 81 of the Reserve Bank of New Zealand Act 1989.

Section 81 of the Reserve Bank of New Zealand Act 1989 requires registered banks to publish disclosure statements containing information that is prescribed by Order in Council under that section. Section 5 (2c) of the Securities Act 1978 will, on its coming into force on 1 July 1996, exempt registered banks from the prospectus and trust deed requirements of that Act. The banks will remain subject to the advertising requirements of the Act and the Securities Regulations 1983. The new disclosure requirements for registered banks under the Reserve Bank of New Zealand Act 1989 commence on 1 January 1996.

Part III of this notice, which exempts registered banks from compliance with the prospectus and trust deed requirements of the Securities Act 1978, applies to banks that comply with the disclosure requirements of the Reserve Bank of New Zealand Act 1989. Banks that do not comply with those requirements will remain subject to Part II of the Securities Act (Banks) Exemption Notice 1988 until those banks comply with those disclosure requirements at which point Part III of this notice will apply to them.

Part IV of the notice also exempts persons, other than registered banks, who issue or allot securities of the kind referred to in paragraphs (a), (b), and (c) above from sections 33 (2), 37 (1), and 37A (1) of the Securities Act 1978.

Part I exempts a designated dealer (as that term is defined) from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of any offer of a debt security which is—

- (a) A promissory note which is endorsed (without negating or limiting liability) but not made by the designated dealer; or

- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by the designated dealer; or
- (c) A negotiable or transferable debt security, not being a promissory note or bill of exchange, in respect of which the designated dealer is liable otherwise than as the original allotter.

The exemption is subject to the conditions—

- (a) That there is, at the time when the offer is made, a registered prospectus which—
 - (i) Relates to a class of debt security which includes the debt security offered;
 - (ii) Contains the information, statements, certificates and other matters specified in the Second Schedule to the Regulations that are applicable;
 - (iii) Is signed by every person who, at the time when the prospectus was delivered for registration, was a director of the designated dealer or an agent of that director authorised in writing;
- (b) That copies of the prospectus are on display and available to the public during normal business hours at each place of business of the designated dealer and its agents;
- (c) That at the date of allotment, the prospectus is not known by the designated dealer or any director to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became so misleading as a result of circumstances occurring after the date of the prospectus).

Part II exempts a designated dealer from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of any offer of a debt security which is—

- (a) A promissory note made by the designated dealer; or
- (b) A deposit with the designated dealer.

The exemption is subject to the same conditions as apply in respect of Part I of the notice.

Part III exempts registered banks from compliance with the prospectus and trust deed requirements of the Securities Act 1978 in respect of any offer of a debt security made by a registered bank and which is—

- (a) A promissory note which is endorsed (without negating or limiting liability) but not made by that registered bank; or
- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by that registered bank; or
- (c) A negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which that registered bank is directly or indirectly liable otherwise than as the original allotter.

Part III also exempts registered banks, subject to certain conditions, from compliance with regulations 14 (1) and 17 of the Securities Regulations 1983 in respect of offers of such securities.

Part IV exempts from compliance with certain provisions of the Securities Act 1978 any person, not being a designated dealer or a registered bank, who allots or is an issuer of a debt security of the kind referred to in Part I or Part III of the notice.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 November 1995.
This notice is administered in the Securities Commission.