

1989/70



**THE SECURITIES ACT (TRUST BANK GROUP) EXEMPTION
NOTICE 1989**

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

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NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Trust Bank Group) Exemption Notice 1989.

(2) This notice shall come into force on the 1st day of April 1989.

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

“The Act” means the Securities Act 1978:

“Bank” means a trustee banks’ successor company referred to in the Schedule to this notice:

“Branch” means any branch, office or agency of a bank at which members of the public may subscribe for debt securities offered to the public for subscription by that bank, but does not include any branch, office or agency at which debt securities may only be subscribed for by electronic or mechanical means:

“The Regulations” means the Securities Regulations 1983:

“Second Schedule” means the Second Schedule to the Securities Regulations 1983.

(2) In this notice a reference to an offer of debt securities made by a bank shall be construed as a reference to an offer of debt securities in respect of which that bank is or remains directly or indirectly liable made in the course of the business of the bank.

(3) Any term or expression which is not defined in this notice, but which is defined in the Act or the Regulations, shall have the meaning given to it by the Act or the Regulations.

PART I

3. Application of this Part of the notice—This Part of this notice applies to any offer of a debt security other than any offer of a debt security to which Part II of this notice applies.

4. Banks exempt from certain provisions of Securities Act 1978 in respect of offers of debt securities to which this Part applies—

(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of section 37A (1) (except section 37A (1) (e)) and section 38 (a) and (b) of the Act in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

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

- (a) That copies of the registered prospectus relating to the debt securities are on display and available to the public during normal business hours at each branch of the bank in New Zealand; and
- (b) That at the date of allotment, the registered prospectus is not known by the bank, or any director of the bank, 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).

5. Banks exempt from regulations 10, 14 (1), and 17 of Securities Regulations 1985 in respect of offers of debt securities to which this Part applies—

(1) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of regulation 10 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 subclause (3) of this clause, every bank, and every person acting on its behalf, is 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.

(3) The exemption granted by subclause (2) of this clause is subject to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the bank over any of its assets and that rank or will, after the allotment of the debt securities referred to in subclause (2) of this clause, rank in priority to such debt securities, is not material in the context of the bank's overall business.

(4) Subject to subclause (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 the bank, is exempted from compliance with the provisions of regulation 17 of the Regulations in respect of the distribution of that advertisement.

(5) The exemption granted by subclause (4) of this clause is subject to the condition that a certificate that complies with subclause (6) of this clause has been completed in respect of the advertisement at the time that the advertisement is distributed to the public.

(6) A certificate for the purposes of subclause (5) of this clause shall be in the form set out in the Fourth Schedule to the Regulations and shall be signed by 2 persons being—

- (a) Directors of the bank; or
- (b) Executive officers of the bank authorised by the directors of the bank to sign such certificates; or
- (c) A director, and an executive officer of the bank who is authorised by the directors of the bank to sign such certificates.

(7) The exemption granted by subclause (4) 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.

(8) Nothing in subclauses (4) to (7) of this clause limits or affects regulation 17 (3) of the Regulations.

6. Banks exempt from certain provisions of Second Schedule to Securities Regulations 1983 in respect of offers of debt securities to which this Part applies—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 1 (2), (3), and (4), and 14 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the offer contains a statement in the following terms:

“This prospectus invites the public to subscribe for debt securities (within the meaning of the Securities Act 1978) that are offered to the public by [name of bank] from time to time. The terms and conditions of the securities are those agreed between the subscriber and the bank from time to time and include any terms and conditions contained in this prospectus and any terms and conditions implied by law.”

(3) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 11 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

PART II

7. Application of this Part of the notice—This Part of this notice applies to any offer of a debt security that 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 issuer.

8. Banks exempt from certain provisions of Securities Act 1978 in respect of offers of debt securities to which this Part applies—

(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of sections 37A (1) (except section 37A (1) (e)), 38 (a) and (b), and 41 (b) (i) of the Act in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

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

- (a) That copies of the registered prospectus relating to the debt securities are on display and available to the public during normal business hours at each branch of the bank in New Zealand; and

- (b) That the registered prospectus contains all the information, statements, certificates and other matters specified in the Second Schedule that are applicable and that the bank is not exempt from including in that registered prospectus; 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 bank; and
- (c) That the registered prospectus 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 the bank or an agent of the director duly authorised in writing; and
- (d) That at the date of allotment, the registered prospectus is not known by the bank, or any director of the bank, 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).

9. Banks exempt from regulations 10, 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, is exempted from compliance with the provisions of regulations 10 and 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 subclause (3) 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 is 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.

10. Banks exempt from certain provisions of Second Schedule to Securities Regulations 1983 in respect of offers of debt securities to which this Part applies—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 1 (2), (3), and (4), and 14 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the offer contains a statement in the following terms:

“This prospectus invites the public to subscribe for debt securities (within the meaning of the Securities Act 1978) that are offered to the public by [name of bank] from time to time. The terms and conditions of the securities are those agreed between the subscriber and the bank from time to time and include any terms and conditions contained in this prospectus and any terms and conditions implied by law.”

(3) In any case where no debt securities other than debt securities to which this Part of this notice applies are offered to the public for subscription by the bank—

(a) Nothing in subclause (1) of this clause in so far as it applies to clause 1 (2) of the Second Schedule shall apply to that offer:

(b) Nothing in subclause (2) of this clause shall apply to that offer.

(4) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 2 and 11 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

PART III

11. Application of this Part of the notice—Unless the context otherwise requires, this Part of this notice applies to any offer of debt securities made by a bank.

12. Interpretation—In this Part of the notice, unless the context otherwise requires,—

“Bank”, in relation to an offer of debt securities, means a trustee banks’ successor company named in the Schedule to this notice which is a member of a group of companies of which Trust Bank New Zealand Limited is the holding company and in which each other trustee banks’ successor company named in that Schedule is also a member, each trustee banks’ successor company named in that Schedule being—

(a) Unconditionally liable (whether or not jointly or severally with any other trustee banks’ successor company named in that Schedule or any other person) to repay the debt securities issued to the public by each other trustee bank’s successor company named in that Schedule; or

(b) Liable to repay those securities subject to the condition that the issuer or any other person has failed to do so:

“Guaranteeing group”, in relation to an offer of debt securities by a bank, means the bank and all other guaranteeing members at the specified date:

“Guaranteeing member”, in relation to an offer of debt securities by a bank, means each member of the group of trustee banks’ successor companies of which Trust Bank New Zealand Limited is the holding company that—

- (a) Is unconditionally liable (whether or not jointly or severally with the bank or any other person) to repay the securities; or
- (b) Is liable to repay the securities subject only to the condition that the bank or any other person has failed to do so:

“Specified group”, in relation to an offer of debt securities by a bank, means the bank and all other guaranteeing members in respect of the periods since they became such members.

13. Banks exempt from provisions of clause 4 of Second Schedule in respect of offers of debt securities—(1) Subject to subclause (2) of this clause, every bank and every person acting on its behalf, is exempted from compliance with the provisions of clause 4 (1) of the Second Schedule in respect of any offer of debt securities made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that every registered prospectus containing an offer of debt securities states the name of each guaranteeing member.

(3) Subject to subclause (4) of this clause, every bank and every person acting on its behalf, is exempted, in respect of any offer of debt securities to which Part I of the notice applies, from compliance with clause 4 (2) of the Second Schedule in so far as that subclause requires a registered prospectus to state the matters referred to in that subclause in respect of a guaranteeing member.

(4) The exemption granted by subclause (3) of this clause is subject to the condition that in the application of the provisions of subclause (2) (d) of clause 4 of the Second Schedule the net tangible assets of any guarantor exclude assets that are also assets of the guaranteeing group.

(5) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 4 (2) of the Second Schedule in respect of any offer of debt securities to which Part II of this notice applies.

14. Banks exempt from clauses 6, 7, 9, 10, 12, and 13 (2) of Second Schedule in respect of offers of debt securities—(1) Subject to subclause (2) of this clause, every bank and every person acting on its behalf, is exempted from compliance with the provisions of clauses 6, 7, 9, 10, 12, and 13 (2) of the Second Schedule in respect of any offer of debt securities made by that bank in so far as those provisions require a registered prospectus to contain information, statements or other matters in respect of the group, the borrowing group, or a guaranteeing subsidiary.

(2) The exemption granted by subclause (1) of this clause is subject to the conditions:

- (a) That the information, statements and other matters required to be disclosed, but for subclause (1) of this clause, in respect of the borrowing group, are disclosed in respect of the guaranteeing group:
- (b) That the information, statements and other matters required to be disclosed, but for subclause (1) of this clause, in respect of the group, are disclosed in respect of the specified group:
- (c) That the information, statements and other matters required to be disclosed, but for subclause (1) of this clause, in respect of a

guaranteeing subsidiary, are disclosed in respect of a guaranteeing member.

(3) Nothing in subclause (2) of this clause, in so far as it applies to clause 6 (2) of the Second Schedule, applies in respect of an offer of debt securities to which Part II of this notice applies.

15. Banks exempt from clause 8 of Second Schedule in respect of offers of debt securities—Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 8 of the Second Schedule in respect of any offer of debt securities made by that bank.

16. Banks exempt from clause 16 of Second Schedule in respect of offers of debt securities—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 16 of the Second Schedule in respect of any offer of debt securities made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the provisions of clauses 16 to 32 of the Second Schedule are complied with in relation to the specified group except that—

- (a) For the purposes of the application of clause 20 (b) of the Second Schedule, the amounts of term liabilities owing to directors of Trust Bank New Zealand Limited shall also be stated:
- (b) For the purposes of the application of clause 21 (c) of the Second Schedule, the amounts of current liabilities owing to directors of Trust Bank New Zealand Limited shall also be stated:
- (c) For the purposes of the application of clause 25 (c) of the Second Schedule, the amounts of accounts receivable from directors of Trust Bank New Zealand Limited shall also be stated:
- (d) For the purposes of the application of clause 30 (b) of the Second Schedule, in so far as that clause requires the balance sheet contained in the registered prospectus to include comparative figures as at the end of the preceding accounting period in respect of the matters referred to in clause 20 (c) of that Schedule, that clause shall only require comparative figures to be disclosed in respect of any offer of debt securities made after the 30th day of June 1989:
- (e) The provisions of clause 30 (d) of the Second Schedule need not be complied with if the registered prospectus specifies—
 - (i) The final aggregate amounts, where material, in each currency (other than amounts in New Zealand currency) derived by the bank from amounts reported to it from all sources (whether in New Zealand or elsewhere) for final conversion of any monetary assets and liabilities to New Zealand currency for inclusion in its balance sheet; and
 - (ii) The exchange rates used to convert such amounts to New Zealand currency:
- (f) The provisions of clause 31 (b) (i) of the Second Schedule need not be complied with.

17. Banks exempt from clause 35 of Second Schedule in respect of offers of debt securities—(1) Subject to subclause (2) of this clause, every bank and every person acting on its behalf, is exempted from compliance

with the provisions of clause 35 of the Second Schedule in respect of any offer of debt securities made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that every registered prospectus which contains an offer of debt securities contains a statement by the directors of Trust Bank New Zealand Limited as to whether, after due enquiry by them in relation to the period between the date of the latest balance sheet set out in the registered prospectus and the specified date there have, in their opinion, arisen any circumstances that materially adversely affect—

- (a) The trading or profitability of the guaranteeing group; or
- (b) The value of its assets; or
- (c) The ability of the guaranteeing group to pay its liabilities due within the next 12 months.

18. Banks exempt from compliance with provisions of clause 36 of Second Schedule in respect of offers of debt securities—(1) Subject to subclauses (2) and (3) of this clause, every bank and every person acting on its behalf, is exempted from compliance with the provisions of clause 36 of the Second Schedule in respect of any offer of debt securities made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that every registered prospectus which contains an offer of debt securities contains a copy of a report by a qualified auditor, signed by that auditor (either in his or her own name or that of his or her firm) stating—

- (a) Whether or not, in his or her opinion, the financial statements contained in the registered prospectus and that are required to be audited comply with the Regulations, in so far as they are applicable, and this notice, and give a true and fair view of the state of affairs of the specified group as at the date thereof and of the results and cash flows of the specified group for the period to which they relate; and
- (b) Whether the amounts stated pursuant to clauses 7 (2), 7 (3), and 12 of the Second Schedule (as modified in their application by this notice) and clause 19 (2) of this notice have been taken from audited financial statements, and whether or not the amounts have been correctly taken.

(3) The exemption granted by subclause (1) of this clause is subject to the further condition that where the registered prospectus contains a profit forecast the auditor's report shall contain a statement in the following form:

“In our opinion the forecasts, so far as the accounting policies and calculations are concerned, have been properly compiled on the footing of the assumptions made or adopted by the issuer set out at pp.... of this prospectus and are presented on a basis consistent with the accounting policies normally adopted by the specified group.”

19. General conditions of exemptions—(1) Subject to subclause (2) of this clause, the exemptions granted by clauses 13 to 18 of this notice are subject to the following further conditions—

- (a) That where a member of the guaranteeing group acquired a business, or a member of the guaranteeing group became a member, at any time in the 2 years preceding the specified date the

registered prospectus relating to the offer of debt securities contains the following information:

- (i) The name of the member:
- (ii) A brief description of the activities of—
 - (A) That business; or
 - (B) The business carried on by that guaranteeing member— in the course of the period that began 5 years before the specified date and ended on the date on which the business was acquired or that member became a member, as the case may be:
- (iii) In respect of that business or member, the matters specified in clause 7 of the Second Schedule in respect of the 5 accounting periods preceding the specified date:

(b) That where—

- (i) A member of the guaranteeing group acquired a business, or became a guaranteeing member, at any time in the period between the date of the latest balance sheet set out in the registered prospectus and the specified date; or
- (ii) The registered prospectus contains a statement to the effect that a guaranteeing member intends to acquire a business, or equity securities that will result in a body corporate becoming a guaranteeing member—

the registered prospectus relating to the offer of debt securities contains the following information:

- (A) The name of the member of the guaranteeing group:
- (B) The amount of the consideration paid or payable, or proposed to be paid, by the member of the guaranteeing group for the business, or body corporate:
- (C) A brief description of that business, or of the business carried on by that member or body corporate, in the course of the 5 years before the specified date:
- (D) In respect of that business, member, or body corporate, the matters specified in clause 7 of the Second Schedule in respect of the 5 accounting periods preceding the specified date, and the matters specified in clauses 16 to 32 of the Second Schedule.

(2) Nothing in subclause (1) of this clause shall apply in respect of a business, guaranteeing member, or body corporate if the consideration paid or payable, or proposed to be paid, for the acquisition of the business, guaranteeing member, or body corporate is not more than one-fifth of the amount of the total tangible assets shown in the balance sheet contained in the registered prospectus.

(3) Nothing in subclause (1) (a) of this clause applies in relation to a banks' becoming a member of the guaranteeing group before the 1st day of April 1989.

(4) The exemptions granted by clauses 13 to 18 of this notice are subject to the additional condition that the provisions of clause 33 (b) of the Second Schedule are complied with in relation to any material contract disclosed in the registered prospectus.

PART IV

20. Exemptions contained in Parts I and II subject to further condition—The exemptions granted by Parts I and II of this notice are subject to the further condition that the bank is a specified institution within the meaning of section 38k of the Reserve Bank of New Zealand Act 1964.

PART V

21. Persons allotting debt securities to which Part II applies exempted from certain provisions of Securities Act 1978—Every person, not being a bank, who allots or is an issuer of a debt security referred to in clauses 8 to 10 of this notice is exempted from compliance with the provisions of sections 33 (2), 37 (1), and 37A (1) of the Act.

PART VI

22. Revocation—The Securities Act (Trustee Savings Banks) Exemption Notice 1983* is hereby revoked.

SCHEDULE

TRUSTEE BANKS' SUCCESSOR COMPANIES

Trust Bank Auckland Limited
Trust Bank Bay of Plenty Limited
Trust Bank Canterbury Limited
Trust Bank Central Limited
Trust Bank Otago Limited
Trust Bank South Canterbury Limited
Trust Bank Southland Limited
Trust Bank Waikato Limited
Trust Bank Wellington Limited.

Dated at Wellington this 23rd day of March 1989.

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

[L.S.]

C. I. PATTERSON,
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 April 1989, confers on those trustee banks' successor companies which are members of the Trust Bank New Zealand Limited group, as a separate class, the exemption from provisions of the Securities Act 1978 and the Securities Regulations 1983 presently conferred on them and other banks by the Securities Act (Banks) Exemption Notice 1988. It also exempts those trustee banks' successor companies, subject to conditions, from other provisions of the Second Schedule to the Securities Regulations 1983 the effect of which is to allow the use by each bank in its registered prospectus of the consolidated group accounts of the group in which it is a subsidiary.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 30 March 1989.
This notice is administered in the Securities Commission.