



## Securities Act (Ashburton Building Society) Exemption Notice 2006

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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### Notice

#### 1 Title

This notice is the Securities Act (Ashburton Building Society) Exemption Notice 2006.

#### 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 December 2006.

### 4 Interpretation

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

**ABS Canterbury** means Ashburton Building Society  
**Act** means the Securities Act 1978

**designated date** means a date that is not more than 21 days before the date on which the information, statements, certificates, and other matters required under clause 6(3)(b) are sent to members of SMC

**FRS-29** means the financial reporting standard known as Financial Reporting Standard No 29, approved under the Financial Reporting Act 1993

**merged building society** means ABS Canterbury after SMC has merged with it pursuant to the merger

**merger** means a merger of ABS Canterbury with SMC that is to be effected under section 32 of the Building Societies Act 1965

**Regulations** means the Securities Regulations 1983

**SMC** means SMC Building Society

**specified participatory securities** means ordinary shares in the capital of ABS Canterbury that are offered by ABS Canterbury under the merger.

(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 from sections 33(3) and 53 to 53F of Act and regulation 3(3) of Regulations

ABS Canterbury and every person acting on its behalf are exempted from sections 33(3) and 53 to 53F of the Act and regulation 3(3) of the Regulations in respect of the specified participatory securities.

**6 Conditions of exemptions in clause 5**

- (1) The exemptions in clause 5 are subject to the condition that the registered prospectus for the offer of the specified participatory securities contains—
  - (a) the information, statements, certificates, and other matters specified in clauses 2, 4 to 7, 16, 17, 21, 39, and 40 of Schedule 1 of the Regulations as if those securities were equity securities; and
  - (b) a description and (where practicable) quantification of all liabilities (including potential and contingent liabilities) that a person will or may incur as a holder of specified participatory securities.
- (2) The exemptions in clause 5 are also subject to the condition that the registered prospectus for the offer of the specified participatory securities contains, or is accompanied by,—
  - (a) a copy of the most recent audited consolidated financial statements of ABS Canterbury and SMC that—
    - (i) comply with, and have been registered under, the Financial Reporting Act 1993; or
    - (ii) in the case of interim consolidated financial statements, have been prepared to comply with the Financial Reporting Act 1993 as if they required registration under that Act; and
  - (b) in relation to ABS Canterbury, if the date of allotment of the specified participatory securities would be more than 9 months after the balance date of the financial statements of ABS Canterbury referred to in paragraph (a), a copy of the interim consolidated financial statements of ABS Canterbury that comply with paragraph (a) (except that they need not be audited) for a period beginning on the day after that balance date and ending on a date that is not more than 9 months later; and
  - (c) a prospective consolidated statement of financial position for the merged building society as at the date on which the merger is proposed to take effect that complies with FRS-29; and
  - (d) prospective consolidated statements of financial position, financial performance, and cash flows for 1 or more future accounting periods of the merged building society that in each case—

- (i) is prepared as if the merger had already been effected; and
    - (ii) complies with FRS-29; and
  - (e) a statement by the directors of ABS Canterbury as to whether, after due inquiry by them in relation to the period between the balance date of the financial statements of ABS Canterbury referred to in paragraph (a) or of any interim financial statements of ABS Canterbury referred to in paragraph (b) (as the case may be) and the designated date, there have, in their opinion, arisen any circumstances that materially adversely affect—
    - (i) the trading or profitability of ABS Canterbury; or
    - (ii) the value of its assets; or
    - (iii) the ability of ABS Canterbury to pay its liabilities due within the next 12 months; and
  - (f) a statement by the directors of ABS Canterbury that, between the balance date of the financial statements referred to in paragraph (a) or of any interim financial statements of ABS Canterbury referred to in paragraph (b) (as the case may be) and the designated date, there have been no material changes in the nature of the business of ABS Canterbury; and
  - (g) the information, statements, certificates, and other matters that must be sent to shareholders under section 221(3) of the Companies Act 1993 as if ABS Canterbury and SMC were companies registered under the Companies Act 1993.
- (3) The exemptions in clause 5 are also subject to the following conditions:
  - (a) that the date of allotment of any specified participatory securities is not more than 9 months after the balance date of the financial statements of ABS Canterbury referred to in subclause (2)(a) or of any interim financial statements of ABS Canterbury referred to in subclause (2)(b) (as the case may be); and
  - (b) that it is a term of the offer that ABS Canterbury complies with all applicable requirements of the amalgamation procedure under sections 220 and 221(1) to (3) of the Companies Act 1993 as if it were a company registered under the Companies Act 1993; and

- (c) that ABS Canterbury complies with sections 53 to 53F of the Act as if the specified participatory securities were equity securities.

**7 When certain financial statements not required**

A registered prospectus for the offer of the specified participatory securities sent to a member of SMC does not have to contain, or be accompanied by, the financial statements of SMC referred to in clause 6(2)(a) if—

- (a) a copy of the most recent annual report of SMC has previously been sent to that member; or
- (b) a copy of the most recent financial statements of SMC has previously been sent to that member under section 97A of the Building Societies Act 1965.

**8 Exemption from regulation 7A(1) of Regulations**

ABS Canterbury and every person acting on its behalf are exempted from regulation 7A(1) of the Regulations in respect of the specified participatory securities.

**9 Condition of exemption in clause 8**

The exemption in clause 8 is subject to the condition that, subject to clause 10, every investment statement that relates to the specified participatory securities contains all of the information, statements, and other matters specified in Schedule 3D of the Regulations that are applicable as if the specified participatory securities were equity securities.

**10 Exemption from clauses 1(1) and 5 of Schedule 3D of Regulations**

- (1) ABS Canterbury and every person acting on its behalf are exempted, in respect of the specified participatory securities, from the requirement to include in an investment statement in the list of questions referred to in clause 1(1) of Schedule 3D of the Regulations, the question “*How much do I pay?*”.
- (2) ABS Canterbury and every person acting on its behalf are exempted, in respect of the specified participatory securities, from clause 5 of Schedule 3D of the Regulations and the italicised question above that clause.

**11 Conditions of exemptions in clause 10**

- (1) The exemption in clause 10(1) is subject to the condition that, in place of the question “*How much do I pay?*”, the investment statement includes the question “*What will this cost me?*”.
- (2) The exemption in clause 10(2) is subject to the condition that the investment statement contains a brief description of the terms of exchange of the securities of SMC for the specified participatory securities.

Dated at Wellington this 24th day of January 2006.

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

[L.S.]

J. Diplock,  
Chairperson.

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**Statement of reasons**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2006, exempts the Ashburton Building Society (**ABS Canterbury**) from certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of ordinary shares in the capital of ABS Canterbury to members of the SMC Building Society (**SMC**) as part of the proposed merger of ABS Canterbury with SMC.

The exemptions, subject to conditions, enable—

- disclosure about the offer of ABS Canterbury shares to SMC members to be based on the amalgamation provisions of Part 13 of the Companies Act 1993 as if ABS Canterbury were a company rather than a building society; and

- ABS Canterbury's shares (which are participatory securities under the Securities Act 1978) to be treated as equity securities for disclosure purposes.

The Securities Commission considers that it is appropriate to grant the exemption for the following reasons:

- ABS Canterbury's shares are participatory securities in terms of the Securities Act 1978. However, the shares have the characteristics of equity securities. The Securities Act (Building Societies) Exemption Notice 2002 allows a prospectus in respect of building society shares to contain the information usually required in a prospectus for equity securities, and it is consistent with that class exemption to enable disclosure about the issue of ABS Canterbury shares under its merger with SMC to be made as if it were an issue of equity securities; and
- the exemption is consistent with the policy of the Securities Act (Building Societies) Exemption Notice 2002 and the Securities Act (Amalgamations) Exemption Notice 2002. The Commission considers it appropriate to extend the terms of the Securities Act (Amalgamations) Exemption Notice 2002 to this union to enable ABS Canterbury, a building society registered under the Building Societies Act 1965, to make disclosure about the offer of its shares under the merger with SMC using the amalgamation provisions of Part 13 of the Companies Act 1993 as if ABS Canterbury were a company. ABS Canterbury and SMC will still need to comply with the union provisions of the Building Societies Act 1965.

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

Date of notification in *Gazette*: 26 January 2006.

This notice is administered by the Securities Commission.

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