



THE SECURITIES ACT (TRUSTEE COMPANIES) EXEMPTION NOTICE 1993

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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 (Trustee Companies) Exemption Notice 1993.

(2) This notice shall come into force on the 1st day of April 1993.

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

“The Act” means the Securities Act 1978:

“Fund” means a Group Investment Fund established under section 29 of the Trustee Companies Act 1967:

“Qualifying participatory security” means a security which is an interest in a Fund:

“The Regulations” means the Securities Regulations 1983:

“Trustee company” means a trustee company within the meaning of the Trustee Companies Act 1967 and that is named in the First Schedule to this notice.

(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. Application—This notice applies in relation to qualifying participatory securities offered to the public for subscription by means of a registered prospectus registered on or after the date on which this notice comes into force.

4. Trustee companies offering interests in Group Investment Funds exempt from sections 33 (3) and 37 (3) of the Securities Act 1978—(1) Subject to subclause (2) of this clause, every trustee company, and every person acting on its behalf, is exempted from compliance with the provisions of sections 33 (3) and 37 (3) of the Act in respect of any offer of qualifying participatory securities to which this notice applies of which that trustee company is the issuer.

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

- (a) That the trustee company has made a declaration of trust by deed under seal in respect of the Fund to which the qualifying participatory securities relate containing provisions specifying the matters set out in the Second Schedule to this notice and a copy of the deed has been lodged with the Registrar of Companies:
- (b) That the registered prospectus in respect of the qualifying participatory securities contains a description of the terms and conditions of the declaration of trust and a statement by the trustee company—
 - (i) That the offer of the securities complies with the declaration of trust; and
 - (ii) Whether the trustee company guarantees repayment of the securities:
- (c) That any interim balance sheet, any interim profit and loss account, and any statement of cash flows of any Fund contained in the registered prospectus pursuant to clause 21 (2), clause 31 (2), and clause 33 (b), as the case may be, of the Third Schedule to the Regulations is audited:
- (d) That the accounting records relating to any Fund are audited at least once a year by a qualified auditor:
- (e) That a copy of the most recent audited balance sheet (including every document required by law to be attached thereto) relating to any Fund is, within 2 months after the accounting records have been audited pursuant to paragraph (d) of this subclause, either—
 - (i) Given or sent to all persons who are, at the time the balance sheet is given or sent, holders of qualifying participatory securities in that Fund; or
 - (ii) Delivered to the Registrar of Companies for filing with the records of the trustee company.

5. Trustee companies offering interests in Group Investment Funds exempt from sections 37A (1) (a) to (d), and 38 (a) and (b) of the Securities Act 1978 and regulation 10 of the Securities Regulations 1983—(1) Subject to subclause (2) of this clause, every trustee company, and every person acting on its behalf, is exempted from compliance with the provisions of sections 37A (1) (a) to (d) and 38 (a) and (b) of the Act and regulation 10 of the Regulations in respect of any offer of qualifying participatory securities to which this notice applies made by that trustee company.

(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 qualifying participatory securities are on display and available to members of the public during normal business hours at each place of business of the trustee company at which offers of the qualifying participatory securities are made; and
- (b) That at the date of allotment, the registered prospectus is not known by the trustee company, or any director of the trustee company, 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).

6. Trustee companies exempt from section 52 (1) and (2) of the Securities Act 1978 in relation to register of qualifying participatory securities required to be kept under section 51 (1) (c) of that Act—

(1) Subject to subclause (2) of this clause, every trustee company is exempted from compliance with the provisions of section 52 (1) and (2) of the Act in respect of the register of qualifying participatory securities to which this notice applies kept by that trustee company under section 51 (1) (c) of the Act.

(2) The exemption from section 52 (1) of the Act granted by subclause (1) of this clause is subject to the condition that every register of qualifying participatory securities kept under section 51 (1) (c) of the Act by the trustee company shall, except when duly closed (but subject to such reasonable restrictions as the trustee company may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of any holder of securities registered therein, or the representative of the holder, in respect of the securities of that holder, without fee.

7. Trustee companies exempt from section 54 of the Securities Act 1978 in respect of qualifying participatory securities—(1) Subject to subclause (2) of this clause, every trustee company is exempted from compliance with the provisions of section 54 of the Act in respect of qualifying participatory securities to which this notice applies allotted by that trustee company.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the trustee company shall send, or cause to be sent, to the security holder at any time upon request and at least once every 6 months, a written statement which properly evidences the nature, ownership, terms, and conditions of the security.

SCHEDULES

Cl. 2 (1)

FIRST SCHEDULE

AMP Perpetual Trustee Company N.Z. Limited.
 The New Zealand Guardian Trust Company Limited.
 New Zealand Permanent Trustees Limited.
 PGG Trust Limited.
 The Trustees, Executors, and Agency Company of New Zealand (Limited).

Cl. 4 (2) (a)

SECOND SCHEDULE

MATTERS TO BE SPECIFIED IN DEED OF DECLARATION OF TRUST

1. Investments of Fund
2. Capital of Fund
3. Redemption and transfer of qualifying participatory securities
4. Winding up of Fund
5. Meetings
6. Trustee
7. Profits

1. Investments of Fund—The investments or classes of investment in which the assets of the Fund may be invested.

2. Capital of Fund—(1) The number and amount of each class of qualifying participatory securities that have been or may be issued in respect of the Fund.

(2) The liability of the holders of qualifying participatory securities to contribute to the Fund before the winding up thereof.

(3) Where there is a minimum amount of qualifying participatory securities that must be allotted before the commencement of the Fund, a statement of that minimum amount.

3. Redemption and transfer of qualifying participatory securities—The terms relating to the redemption, transfer, and transmission of the qualifying participatory securities.

4. Winding up of Fund—(1) The circumstances in which the Fund shall or may be wound up, and the procedure for winding up.

(2) The rights and liabilities of holders of qualifying participatory securities on, and in the course of, the winding up of the Fund.

5. Meetings—The frequency of, procedure for convening and holding, the business to be conducted at, and the voting rights at, meetings of holders of qualifying participatory securities.

6. Trustee—(1) The terms relating to the appointment, remuneration, and, if any, removal from office of the trustee of the Fund.

(2) The powers of the trustee of the Fund including any borrowing powers and any powers to delegate the management of the Fund.

(3) The duties and liabilities of the trustee including the duty to manage the Fund in the best interests of the holders of qualifying participatory securities.

SECOND SCHEDULE—*continued*MATTERS TO BE SPECIFIED IN DEED OF DECLARATION OF TRUST—*continued*

7. Profits—The terms relating to the use or distribution of any profits of the Fund.

Dated at Wellington this 4th day of March 1993.

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

[L.S.]

P. D. McKENZIE,
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 1993, exempts the trustee companies named in the First Schedule to the notice, subject to conditions, from compliance with certain provisions of the Securities Act 1978 and regulation 10 of the Securities Regulations 1983 in respect of investments in Group Investment Funds established under the Trustee Companies Act 1967.

The notice applies in respect of investments in Group Investment Funds offered to the public for subscription by means of a registered prospectus registered on or after the date on which the notice comes into force. Investments in Group Investment Funds offered to the public for subscription by means of a registered prospectus registered before that date will continue to be subject to the Securities Act (Trustee Companies) Exemption Notice 1983.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 March 1993.
This notice is administered in the Securities Commission.