



**SECURITIES ACT (TOWER CORPORATION) EXEMPTION  
NOTICE (NO. 3) 1999**

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

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ANALYSIS

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NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (Tower Corporation) Exemption Notice (No. 3) 1999.

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

(3) This notice ceases to have effect on the close of 31 December 1999 in respect of each offer referred to in paragraphs (a) to (c) of the definition of the term “Tower offer” in clause 2 (1).

(4) This notice expires on the close of 30 June 2004.

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

“Act” means the Securities Act 1978:

“Capital raising” means the subscriptions for shares under a Tower offer and the arrangements for the borrowing of money that are part of the scheme for conversion:

- “Company” means Tower Limited, a company to be incorporated under the Companies Act 1993 on the conversion of Tower to a company limited by shares under the scheme for conversion:
- “Employee” means an employee of the company or of any related company (as that term is defined in the Companies Act 1993) of Tower Limited; and includes the managing director of the company:
- “Facility term sheet” means the facility term sheet between Tower Holdings (Australia) Limited and Tower Financial Services Group Limited as borrowers, and Bank of New Zealand and Westpac Banking Corporation as arrangers and underwriters:
- “First Schedule” means the First Schedule of the Regulations:
- “FRS-34” means Financial Reporting Standard 34 Life Insurance Business issued by the Institute of Chartered Accountants of New Zealand in November 1998:
- “Group scheme” means the Group Executive Share Purchase Scheme under which specified equity securities are offered to employees on the terms set out in the trust deed for that scheme:
- “Information memorandum” means the document, explaining Tower’s proposal to demutualise, that was distributed to members of Tower for the purposes of a general meeting of Tower held on 10 May 1999:
- “Members of Tower” means persons who are members of Tower under section 13 of the Tower Corporation Act 1990:
- “Option scheme” means the Senior Executive Share Option Scheme under which options to subscribe for shares in the company will be offered to certain senior executives of the company:
- “Regulations” means the Securities Regulations 1983:
- “Scheme for conversion” means the scheme for the conversion of Tower, under Part IV of the Tower Corporation Act 1990, from a statutory corporation to a company limited by shares under the Companies Act 1993 as approved by the High Court under section 18 of the Tower Corporation Act 1990:
- “Share sale facility” means the facility to be provided by Tower, or the company, to members of Tower who have subscribed for and been allotted partly paid shares in the company or who have been allotted fully paid shares in the company under the scheme for conversion, to enable them to sell their shares:
- “Specified equity securities” means ordinary shares in the company:
- “Subsidiary” has the same meaning as in section 2 (1) of the Financial Reporting Act 1993:
- “Tower” means Tower Corporation:
- “Tower offer” means each of the following offers:
- (a) An offer of partly paid specified equity securities made to those members of Tower who hold partly paid share entitlements as a result of the scheme for conversion:
  - (b) An offer of specified equity securities made to members of Tower, members of the public, and other persons:
  - (c) An offer of previously allotted specified equity securities made to members of Tower, members of the public, and other persons under the share sale facility:
  - (d) An offer of specified equity securities made under the group scheme.

(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.

*Exemptions Relating to All Tower Offers*

**3. Exemption from regulation 7 (1) (a) of Regulations**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from regulation 7 (1) (a) of the Regulations to the extent that that paragraph requires a prospectus relating to a Tower offer that is delivered to the Registrar for registration to have endorsed on it or attached to it or be accompanied by a copy of the facility term sheet.

(2) The exemption is subject to the condition that the prospectus so delivered has endorsed on it or attached to it or is accompanied by a copy of the facility term sheet excluding the following provisions:

- (a) The fee specified in the section 'Unrated Line Fee':
- (b) The figures specified in the section 'Unrated Margin':
- (c) The figures contained in the columns headed 'Margin' and 'Line Fee' of the table in the section 'Rated Margin & Line Fee':
- (d) The figures, but not the date, contained in the first and second bulleted points in the section 'Financial Undertakings':
- (e) The figures contained in the column headed 'Max Senior Debt to Equity' in the section 'Financial Undertakings':
- (f) The figures, but not the date, in the last bulleted point in the section 'Financial Undertakings'.

**4. Exemption from regulation 12 (1) (c) of Regulations**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from regulation 12 (1) (c) of the Regulations in respect of any advertisement containing or referring to a Tower offer.

(2) The exemption is subject to the conditions that—

- (a) Any summary financial statements contained in an advertisement containing or referring to a Tower offer are substantially similar to summary pro forma restated financial statements contained in the registered prospectus relating to the offer; and
- (b) If the advertisement contains unaudited summary financial statements, the advertisement states that those summary financial statements are unaudited.

**5. Exemption from clause 1 (4) of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from clause 1 (4) of the First Schedule in respect of each Tower offer.

(2) The exemption is subject to the condition that the registered prospectus relating to the offer concerned—

- (a) Describes the procedure for setting the subscription or purchase price of the specified equity securities concerned; and
- (b) Describes the factors that may be taken into account in determining that price; and
- (c) States when that price is expected to be set; and
- (d) States how an investor may ascertain that price; and
- (e) States how any over payments of price will be treated, and describes the procedure for refunding over payments; and

- (f) Describes the procedures for holding application moneys by or on behalf of Tower; and
- (g) Describes the method of allocation of the specified equity securities concerned to applicants for those securities; and
- (h) States the price range within which the directors expect the final price will be set, and includes a warning that the final price may fall outside the stated range; and
- (i) To the extent that the exemption relates to an offer made under the group scheme, states that, from the time when the specified equity securities are listed on the New Zealand Stock Exchange, the price of those securities will be the market price and describes how that market price will be determined.

**6. Exemption from clause 5A of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from clause 5A of the First Schedule in respect of each Tower offer.

(2) The exemption is subject to the condition that the registered prospectus relating to the offer—

- (a) States any modifications, exceptions, or limitations on the powers of the board of directors of the company that will be imposed by the Companies Act 1993 or the constitution of the company at the date of incorporation of the company; and
- (b) Contains a statement by the directors of Tower that, in their opinion, there is nothing in the Companies Act 1955, the Tower Corporation Act 1990, or the bylaws of Tower that limits the ability of the directors of Tower to carry out the actions required to complete the demutualisation of Tower and its conversion to the company.

**7. Exemption from clause 10 (1) (c) of First Schedule**—Tower, the company, and every person acting on behalf of either of them, are exempted from clause 10 (1) (c) of the First Schedule in respect of each Tower offer.

**8. Exemption from clause 11 of First Schedule**—Tower, the company, and every person acting on behalf of either of them, are exempted from clause 11 of the First Schedule to the extent that that clause requires information concerning the acquisition by Tower of FAI Life Limited in May 1999 to be included in a prospectus relating to a Tower offer.

**9. Exemption from clauses 8 (2) and (3) and 23 to 37 of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from clauses 8 (2) and (3) and 23 to 37 of the First Schedule in respect of each Tower offer.

(2) The exemption is subject to the condition that the registered prospectus relating to the offer contains—

- (a) Pro forma restated consolidated financial statements of the company (including a statement of financial performance, statement of financial position, statement of cash flows, and segmental reporting statement) for the years ended 30 September 1997 and 30 September 1998, all prepared in accordance with FRS-34 as if

FRS-34 had applied throughout those years and on the basis that the conversion of Tower to the company and the capital raising had been completed by 30 September 1996 and 30 September 1997 respectively; and

- (b) Pro forma restated consolidated interim financial statements of the company (including a statement of financial performance, statement of financial position, statement of cash flows, and segmental reporting statement) for the 6 months ended 31 March 1999, prepared in accordance with FRS-34 as if FRS-34 had applied throughout that period and on the basis that the conversion of Tower to the company and the capital raising had been completed by 30 September 1998; and
  - (c) Reconciliation statements explaining the differences between the following financial statements for each of the year ended 30 September 1997, the year ended 30 September 1998, and the 6 months ended 31 March 1999:
    - (i) The financial statements that Tower is required by law to prepare; and
    - (ii) Consolidated financial statements of Tower, restated in accordance with FRS-34 as if FRS-34 had applied throughout the year or 6 months concerned; and
    - (iii) The pro forma restated consolidated financial statements for the company referred to in paragraphs (a) and (b); and
  - (d) A summary financial statement for Tower for each of the years ended 30 September 1994, 30 September 1995, 30 September 1996, 30 September 1997, and 30 September 1998, and for the 6 months ended 31 March 1999, (which, in the case of those last 2 years and that 6-month period, are to be derived from restated summary financial statements prepared as if FRS-34 had applied throughout that period); and
  - (e) Prospective financial information for the company for the years ended 30 September 1999 and 30 September 2000, including statements of financial performance and summarised statements of financial position and of cash flows.
- (3) The exemption is subject to the further conditions that—

- (a) The auditor's report referred to in clause 42 (1) of the First Schedule contains—

- (i) A statement by the auditor as to whether the amounts stated in the summary financial statement referred to in subclause (2)(d) have been taken from audited financial statements and whether or not the amounts have been correctly taken; and

- (ii) A statement to the following effect:

“In our opinion, the pro forma restated financial statements of Tower Limited that are required by clause 9 of the Securities Act (Tower Corporation) Exemption Notice (No. 3) 1999—

- (A) Comply with the terms of that notice; and

- (B) So far as the accounting policies and calculations are concerned, have been properly compiled on the footing of the assumptions made or adopted by Tower Corporation set out at pp| of the prospectus, and are presented on a basis consistent with the

accounting policies that are expected to be adopted by Tower Limited and its subsidiaries and which are set out on pp [ ] of the prospectus.”; and

- (b) No allotment of securities offered for subscription under any offer referred to in paragraphs (a) to (c) of the definition of the term “Tower offer” in clause 2 (1), is made more than 9 months after the date of the pro forma restated consolidated interim statement of financial position of the company referred to in subclause (2) (b); and
- (c) Any material differences between the restated financial performance or restated financial position of Tower as disclosed in the information memorandum and those disclosed in the registered prospectus in accordance with subclause (2) are explained in the prospectus.

**10. Exemption from clauses 13 (a) (ii) and (iii) and 13 (b) of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from clauses 13 (a) (ii) and (iii) and 13 (b) of the First Schedule to the extent that those clauses require information about any options granted, or proposed to be granted, under the option scheme to be included in a prospectus relating to a Tower offer.

(2) The exemption is subject to the condition that the prospectus contains—

- (a) A description of the terms on which options are granted to employees under the option scheme, including the procedure for setting the subscription price for the securities; and
- (b) A statement of the likely maximum number of options to be granted to, or proposed to be granted to, employees under the option scheme, over the 5 years commencing on the date on which the option scheme begins.

**11. Exemption from clause 16 (2) (h) of First Schedule**—Tower, the company, and every person acting on behalf of either of them, are exempted from clause 16 (2) (h) of the First Schedule to the extent that that clause requires information about an agreement relating to the transfer of life insurance business from Tower to Tower Life (NZ) Limited to be included in a prospectus relating to a Tower offer.

**12. Exemption from clause 39 (b) of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from clause 39 (b) of the First Schedule to the extent that that clause requires information about the facility term sheet to be included in a prospectus relating to a Tower offer.

(2) The exemption is subject to the condition that the prospectus states the times and places in New Zealand where copies of the facility term sheet (excluding the provisions specified in paragraphs (a) to (f) of clause 3 (2) of this notice) may be inspected, on request and on payment of any fee prescribed for the purposes of clause 39 (b) of the First Schedule, by a person who so requests.

**13. Exemption from clause 42 (2) of First Schedule**—(1) Tower, the company, and every person acting on behalf of either of them, are

exempted from clause 42 (2) of the First Schedule in respect of each Tower offer.

(2) The exemption is subject to the condition that every prospectus relating to the offer concerned contains a copy of a report by a qualified auditor that includes a statement to the following effect:

“In our opinion, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made or adopted by Tower Corporation set out at pp[ ] of this prospectus, and is presented on a basis consistent with the accounting policies to be adopted by Tower Limited and its subsidiaries.”

#### *Other Exemptions*

**14. Exemptions relating to group scheme**—(1) Tower, the company, and every person acting on behalf of either of them, are exempted from sections 37A (1)(c) and 37A (2) of the Act in respect of any offer of specified equity securities made under the group scheme.

(2) The exemption is subject to the condition that, from the date that they first become available, the most recent audited consolidated financial statements of the company that comply with the Financial Reporting Act 1993 are attached to, or contained in, every copy of a registered prospectus that relates to the group scheme and that is sent to a prospective investor under section 54B of the Act.

**15. Exemptions relating to share sale facility**—(1) In this clause, the term “share sale offer” means an offer referred to in paragraph (c) of the definition of the term “Tower offer” in clause 2 (1).

(2) Tower, the company, and every person acting on behalf of either of them, are exempted from—

(a) Regulations 3 (1) and 7A (1) of the Regulations, to the extent that those provisions require the inclusion in a registered prospectus and investment statement relating to the share sale offer of information about any member of Tower as an issuer of specified equity securities; and

(b) Clause 2 (c) of the First Schedule, to the extent that that clause requires the inclusion in a registered prospectus relating to the share sale offer of a statement of the consideration received or to be received in respect of the original allotment of specified equity securities sold through the share sale facility.

(3) The exemption granted by subclause (2) (a) is subject to the condition that all moneys received in respect of the sale of specified equity securities through the share sale facility are held in trust by Tower until those securities have been allotted by the company.

Dated at Wellington this 20th day of August 1999.

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

[L.S.]

E. H. ABERNETHY,  
Chairman.

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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 the day after the date of its notification in the *Gazette*, exempts Tower Corporation and Tower Limited, subject to conditions, from various provisions of the Securities Act 1978 and Securities Regulations 1983 in relation to offers of securities relating to or consequential upon the conversion of Tower Corporation to a company (Tower Limited).

This notice ceases to have effect on 31 December 1999 in so far as it relates to offers of securities to the general public, and on 30 June 2004 in so far as it relates to offers of securities under the group executive share purchase scheme.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 23 August 1999.  
This notice is administered in the Securities Commission.