



## Securities Act (KCL Investments Limited) 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 (KCL Investments Limited) 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 July 2011.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**certificate of title** means a certificate of title issued under the Land Title Act 1994 (Qld) in respect of the real property

**general partner** means the general partner of the partnership

**generally accepted accounting practice** has the meaning given to that term by section 3 of the Financial Reporting Act 1993

**key event** means the settlement of the acquisition of the real property in a manner that will result in registrable title to the real property being obtained by the specified nominee for the purposes of the scheme

**offeror** means KCL Investments Limited

**partnership** means the limited liability partnership established under the laws of Australia through which certain investments in the trust are facilitated

**property manager** means the manager of the real property

**real property** means the property at 46 Radley Street, Virginia, Queensland, Australia, being Lot 34 Registered Plan 26037 in the county of Stanley and Parish of Kedron and having Title Reference 11529124

**registered valuer** means a person who is a registered valuer within the meaning of the Valuers Registration Act 1992 (Qld)

**Regulations** means the Securities Regulations 1983

**scheme** means the scheme that involves the investment of money in circumstances where each subscriber for specified participatory securities will acquire an interest in the real property through the partnership and the trust

**specified nominee** means the company incorporated under the Corporations Act 2001 (Aust) that holds, or will hold, from time to time the certificate of title on behalf of the subscribers for specified participatory securities

**specified participatory security** means a participatory security issued by the offeror in respect of the scheme

**supervisor** means the statutory supervisor appointed in respect of the specified participatory securities

**trust** means Radley St Unit Trust, a unit trust established under the laws of Australia through which interests in the real property are facilitated

**trustee** means the trustee of the trust.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
- (a) that registered valuer and any director of the offeror, property manager, general partner, trustee, or supervisor are relatives, one being the spouse, civil union partner, or de facto partner of the other or being the parent, brother, sister, or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
  - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
    - (i) a member, shareholder, or director of the offeror, property manager, general partner, trustee, or supervisor; or
    - (ii) a member, shareholder, or director of any company that is a holding company or a subsidiary of the offeror, property manager, general partner, trustee, or supervisor or that is a partner or joint venturer with any of those persons; or
  - (c) there is any other relationship or interest between the registered valuer and the offeror, property manager, general partner, trustee, or supervisor that is likely to influence the judgment of the registered valuer.
- (3) 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 Exemptions

The offeror and every person acting on its behalf are exempted from sections 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.

## 6 Conditions

The exemptions in clause 5 are subject to the following conditions:

- (a) that it is a term of the contract entered into between the subscriber for the specified participatory securities and the offeror for the subscription and allotment of the specified participatory securities that, on the acquisition of the real property in accordance with the scheme, the specified nominee will be issued with a certificate of title;
- (b) that no subscriptions for the specified participatory securities will be received by, or on behalf of, the offeror unless the contract referred to in paragraph (a) has been entered into;
- (c) that all subscriptions for the specified participatory securities and any interest on those subscriptions are held in trust and must, immediately after each of them is received, be paid into a trust account (the **trust account**):
- (d) that no subscription is paid out of the trust account unless it is paid—
  - (i) to a solicitor on trust for subscribers or, subject to section 36A of the Act, to, or for the account of, the trust, the partnership, or both—
    - (A) for the purposes of the key event; and
    - (B) after all conditions relating to the receipt of the subscriptions by, or on behalf of, the offeror in the contract referred to in paragraph (a) have been satisfied; and
    - (C) after all the specified participatory securities offered in accordance with the scheme are subscribed for in full; or
  - (ii) to the relevant subscriber in accordance with paragraph (e); or
  - (iii) to the relevant subscriber in accordance with paragraph (f); or
  - (iv) to the relevant subscriber in accordance with any other right to have the relevant subscription repaid;
- (e) that, if the key event has not occurred within 36 months of a subscription being received by, or on behalf of, the

offeror (the **settlement period**), no specified participatory securities may be allotted to the relevant subscriber in relation to that subscription and that subscription must promptly be returned to the relevant subscriber, unless, before the end of the settlement period,—

- (i) the offeror has given the relevant subscriber written notice that the key event will not occur before the end of the settlement period and that the subscriber is entitled to have that subscription returned at the end of the settlement period; and
  - (ii) the subscriber and the offeror have both signed a written agreement that clearly states that the settlement period is to be extended and specifies the period of time by which the settlement period is to be extended:
- (f) that, if a subscriber signs a written agreement in accordance with paragraph (e)(ii) and the key event has not occurred within the extended period of time specified in that agreement, no specified participatory securities may be allotted to that subscriber in relation to his or her or its subscription and that subscription must promptly be returned to that subscriber:
- (g) that the trust account is maintained by a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998 and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies:
- (h) that every subscriber for specified participatory securities has, before entering into the contract referred to in paragraph (a), been provided with an offeror's written statement that sets out the matters referred to in Schedule 1 and that is signed by the directors of the offeror and dated not more than 2 months before the subscriber's receipt of the written statement:
- (i) that the offeror's written statement contains or has attached a copy of a report by an independent registered valuer that sets out the matters referred to in Schedule 2 and that is signed by the registered valuer and dated not more than 4 months before the date of the offeror's written statement:

- (j) that every subscriber for specified participatory securities is provided with audited annual financial statements in respect of the performance, financial position, and cash flows of the scheme no later than 3 months after each balance date of the scheme:
- (k) that it is a term of the trust deed for the trust that the number of units in the trust is limited to 40 units:
- (l) that it is a term of the trust deed for the trust that the trust's authorised investments are limited to the real property and investments associated with the real property:
- (m) that it is a term of the offer of the specified participatory securities that the trust deed for the trust provides that a subscriber for specified participatory securities may, at any time by notice in writing to the trustee, and subject to the payment of any reasonable costs incurred in connection with the issue of title, require the issue of a certificate of title recording the subscriber's proportionate interest in the real property in the name of the subscriber or the subscriber's nominee.

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## **Schedule 1**

### **Matters to be specified or contained in offeror's statement**

#### **1 Date of offeror's statement**

In a prominent place, the date as at which the offeror's statement is prepared.

#### *Important information for investors*

#### **2 Information at front of offeror's statement**

A statement in the following form (to be set out at the front of the offeror's statement):

#### **"IMPORTANT INFORMATION**

(The information in this section is required under the Securities Act (KCL Investments Limited) Exemption Notice 2006 (being a notice given under the Securities Act 1978).)

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

### **Warning**

This offer is exempt under the Securities Act (KCL Investments Limited) Exemption Notice 2006 from the legal requirement to register a prospectus for this scheme and from certain other requirements of the Securities Act 1978. Your attention is drawn to the absence of these statutory protections.

### **Choosing an investment**

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

|                                                                                       | <i>Page</i> |
|---------------------------------------------------------------------------------------|-------------|
| <i>What sort of investment is this?</i>                                               |             |
| <i>Who is involved in providing it for me?</i>                                        |             |
| <i>How much do I pay?</i>                                                             |             |
| <i>What are the charges?</i>                                                          |             |
| <i>What returns will I get?</i>                                                       |             |
| <i>What are my risks?</i>                                                             |             |
| <i>Can the investment be altered?</i>                                                 |             |
| <i>How do I cash in my investment?</i>                                                |             |
| <i>Who do I contact with inquiries about my investment?</i>                           |             |
| <i>Is there anyone to whom I can complain if I have problems with the investment?</i> |             |
| <i>What other information can I obtain about this investment?</i>                     |             |

### **Choosing an investment adviser**

You have the right to request from any investment adviser a written disclosure statement stating his or her experience and qualifications to give advice. That statement will tell you—

- (a) whether the adviser gives advice only about particular types of investments; and
- (b) whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- (c) whether the adviser will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment adviser commits an offence if he or she does not provide you with a written disclosure statement within 5 working days of your request. You must make the request at the time the advice is given or within 1 month of receiving the advice.

In addition,—

- (a) if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- (b) if an investment adviser receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes.”

*What sort of investment is this?*

**3 Description of scheme**

A description of the scheme, the interests in the scheme being offered, and how long the scheme has been in operation.

**4 Description of real property**

A description of the real property.

**5 Material contracts relating to improvements to real property**

Material details of the contracts relating to the building or improvements if—

- (a) it is proposed to construct a building on the real property; or
- (b) at the date of the offeror’s statement, a building is in the course of construction on the real property; or
- (c) it is proposed to make other improvements to the real property.

**6 Covenants, etc, in respect of real property**

A description of any covenants, conditions, restrictions, and easements in respect of the real property, whether or not



registered on the certificate of title in respect of the real property.

## **7 Material matters relating to real property**

A description of the following matters if those matters have been disclosed by a statutory authority to the offeror and are material for the purposes of the independent valuation report:

- (a) information identifying any special feature or characteristic of the real property (including any risk of potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants); and
- (b) information on private and public stormwater and sewerage drains as shown in the authority's records in relation to the real property; and
- (c) information relating to any statutory charges owing in relation to the real property; and
- (d) information concerning any authorisation, consent, certificate, notice, order, or requisition affecting the real property or any building on the real property that has been issued by the authority; and
- (e) information relating to the use to which the real property may be put and conditions attached to that use; and
- (f) information in relation to the real property that, in terms of any Act, has been notified to the authority by any statutory organisation having the power to classify land or buildings for any purpose; and
- (g) any other information concerning the real property that the authority considers to be relevant.

## **8 Options, etc, in respect of real property**

A description of any option, buyback, or similar arrangement, and any rental guarantees in relation to the real property.

## **9 Material details concerning rights of occupation of real property**

- (1) Material details concerning any rights of occupation to which the real property is subject, whether by lease, licence, or otherwise, including—
  - (a) the term of the agreement; and
  - (b) any rights of renewal; and

- (c) any rent reviews; and
  - (d) the financial standing of tenants or occupiers; and
  - (e) any guarantees or other special provisions.
- (2) A statement—
- (a) of the place where copies of any agreement relating to those rights of occupation may be inspected free of charge; and
  - (b) whether any existing occupant of the real property has failed to meet any material obligations under the terms of any agreement that confers a right of occupation.

*Who is involved in providing it for me?*

**10 Information about persons associated with scheme**

The names and addresses of the following persons associated with the scheme and a description of their role in the scheme:

- (a) the offeror and the directors of the offeror; and
- (b) the property manager and the directors of the property manager; and
- (c) the solicitor referred to in clause 6(g) of this notice; and
- (d) the name and address of the supervisor; and
- (e) the names and addresses of any promoters.

**11 Qualifications and experience of property manager**

The qualifications and experience of the property manager.

**12 Management agreements relating to real property**

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the real property, including—
- (a) the term of the agreement; and
  - (b) the management fee; and
  - (c) the procedures for making decisions that may affect the interests of subscribers for specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

**13 Interests of offeror, property manager, promoter, and others**

- (1) The following information if any of the circumstances in subclause (2) exist:
  - (a) the names of the parties to the transaction and the date of the transaction; and
  - (b) a brief description of the material terms of the transaction; and
  - (c) the nature of the interest in the transaction.
- (2) If the offeror, the property manager, any promoter of the scheme, or any shareholder, director, or employee of the offeror or property manager or promoter—
  - (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the scheme or the real property; or
  - (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the scheme or the real property; or
  - (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the scheme or the real property; or
  - (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the scheme or the real property; or
  - (e) is otherwise directly or indirectly materially interested in any transaction relating to the scheme or the real property.

*How much do I pay?***14 Purchase price**

The purchase price to be paid by subscribers for an interest in the scheme.

*What are the charges?*

**15 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to the offeror or a promoter, or an associated person of the offeror or promoter, or the scheme, by a subscriber (whether directly or indirectly, including by deduction):
  - (a) entry charges:
  - (b) trustee, administration, or management charges:
  - (c) expenses or overhead charges:
  - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
  - (e) early termination charges:
  - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
  - (g) alteration charges:
  - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by the offeror or from the scheme to a promoter or administration manager or investment manager or an associated person of the offeror or the promoter or the administration manager or the investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of the offeror or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of the offeror or any other person to alter any of the charges applicable to the specified participatory securities.

**16 Amount of charges**

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) can, at the date of the offeror's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).

- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) cannot, at the date of the offeror's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

**17 Remuneration of offeror relating to scheme**

The remuneration and other benefits the offeror will receive for establishing and promoting the scheme and the manner in which the remuneration and other benefits are to be paid or provided.

*What returns will I get?*

**18 Income and expenses relating to scheme**

Material details concerning the manner in which all income and expenses relating to the scheme are to be accounted for and the basis upon which profits are to be distributed.

**19 Financial information in respect of real property**

To the extent that it is in the possession or control of the offeror or can reasonably be obtained by the offeror, the following financial information in respect of the real property that is the subject of the scheme:

- (a) a statement of income and expenditure for a financial year ending not more than 5 months before the date of the offeror's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the Institute of Chartered Accountants of New Zealand; and
- (b) a statement of cash flows for a financial year ending not more than 5 months before the date of the offeror's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the Institute of Chartered Accountants of New Zealand.

**20 Prospective financial statements**

If the offeror's statement contains prospective financial information in respect of the scheme, prospective financial statements in respect of the scheme for the first accounting period of 1 year commencing on or after the date of the offeror's statement that—

- (a) comprise statements of financial position, financial performance, and cash flows; and
- (b) accord with generally accepted accounting practice; and
- (c) have been reviewed by a member of the Institute of Chartered Accountants of New Zealand.

*What are my risks?*

**21 Liabilities relating to scheme**

A description and, where practicable, quantification of all liabilities (including contingent liabilities) that a subscriber for specified participatory securities will or may incur as a holder of the specified participatory securities.

*Can the investment be altered?*

**22 Alteration of securities**

- (1) A brief description of any right of a subscriber, the offeror, or any other person to alter the terms of a subscriber's interest in the scheme.
- (2) A brief description of the right of a subscriber to require the issue of a certificate of title recording the subscriber's proportionate interest in the real property in the name of the subscriber or the subscriber's nominee (including the costs that may be payable in connection with that issue).
- (3) A brief description of the consequences of a subscriber requiring the issue of a certificate of title as described in subclause (2).

*How do I cash in my investment?*

**23 Early termination**

A brief description of any right of the offeror, a subscriber, or any other person to terminate a subscriber's interest in the scheme.

**24 A right to sell security**

- (1) A statement as to whether or not a subscriber is entitled to sell his or her interest in the scheme to another person and, if so, whether in the opinion of the offeror there is an established market for those sales.
- (2) If any charges are payable by a subscriber on a sale, a brief description of those charges.

*Who do I contact with inquiries about my investment?*

**25 Inquiries about scheme**

The names or descriptions of officers, employees, or agents of the offeror to whom inquiries about the scheme can be made, and the addresses and business telephone numbers of those people.

*Is there anyone to whom I can complain if I have problems with the investment?*

**26 Complaints about scheme**

- (1) The names or descriptions of officers, employees, or agents of the offeror to whom complaints about the scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the scheme can be made to the supervisor, a trustee or to an industry body, a statement to this effect and the addresses and business telephone numbers of those people.
- (3) A statement as to whether complaints about the scheme can be made to an ombudsman and, if so, the address and business telephone number of the ombudsman.

*What other information can I obtain about this investment?*

**27 Annual information**

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by the offeror.

**28 On request information**

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from the offeror; and
- (b) explaining how the request should be made; and
- (c) of whether any charge may be made for that information and the amount of the charge.

*Other information*

**29 Other material information**

Any other information that would be material to a prospective subscriber's decision to invest in the scheme.

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**Schedule 2**

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**Matters to be specified in independent registered valuer's report****1 Name and address of valuer**

The name and address of the registered valuer and a brief description of that registered valuer's qualifications.

**2 Statement by registered valuer**

A statement that the valuation report is made by the registered valuer as an independent registered valuer.

**3 Purpose of report**

A statement that the registered valuer is making the valuation report for the purposes of the scheme and for use by prospective subscribers for specified participatory securities.

**4 Description of real property**

A description of the real property and, if new buildings and improvements are proposed in respect of the real property, confirmation that the plans and specifications have been inspected by the registered valuer.

**5 Covenants, etc, in respect of real property**

A list of any covenants, conditions, restrictions, easements, and other estates or interests that appear on the certificate of title in respect of the real property as at the date of the independent registered valuer's report.

**6 Present use of real property**

The present use of the real property.

**7 Compliance with town planning requirements**

- (1) The nature of any regional or district plan rules, town planning requirements, or other statutory requirements relating to the real property.
- (2) Whether the intended use of the real property for the purposes of the scheme complies with the rules or requirements referred to in subclause (1).

**8 Statutory valuation of real property**

The value of the real property as determined by the Valuer General (being part of a department of the Queensland Government).

**9 Leasehold interests or tenancy arrangements in respect of real property**

- (1) Current rental payable, and a statement as to whether that rental is being paid, in respect of any existing leasehold interest in the real property or any existing tenancy arrangement relating to the real property.
- (2) Other material matters concerning any leasehold interests or tenancy arrangements.

**10 Registered valuer's opinion as to capital value of real property**

The opinion of the registered valuer as to the capital value of the real property and the date of, and basis for, that capital value free of charges.

**11 Basis of valuation**

The basis upon which the registered valuer's valuation of the real property is made and any assumptions used in making the valuation, including any matters referred to the valuer as described in clause 7 of Schedule 1.

**12 Income from real property**

The amount of income that the real property can reasonably be expected to produce on an annual basis under the conditions prevailing at the date of the registered valuer's report.

**13 Other material matters relating to real property**

Any other matters concerning the real property that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

**14 Consent to distribution of report**

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective

subscribers for specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 29th day of August 2006.

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

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice comes into force on the day after its notification in the *Gazette*. It expires on 31 July 2011.

This notice applies to offers by KCL Investments Limited of participatory securities in a scheme for ownership interests in real property in Virginia, Queensland, Australia.

The notice exempts those offers, subject to conditions, from the prospectus and investment statement requirements and various other requirements of the Securities Act 1978. These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 and with a report by a registered valuer that contains the information specified in Schedule 2.

The Securities Commission (the **Commission**) considers that it is appropriate to grant the exemptions because—

- the detailed provisions of the Securities Act 1978 and the Securities Regulations 1983 and the disclosure required by them are not ideally suited to offers of real property or of interests in real property; and
- in relation to proportionate property ownership schemes for real estate in New Zealand, the Commission has granted a

- class notice, the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002; and
- this exemption differs from the class notice in that the property will not be offered to the investors through a licensed real estate agent or a trustee company, and a separate certificate of title will only be issued to investors on request. The Commission considers that the appointment of a statutory supervisor for the scheme adds protection for investors to compensate for these differences; and
  - the conditions of these exemptions require disclosure to be made to investors in the form of a modified investment statement and a valuer's report. This disclosure provides key information to potential investors including financial information about the scheme (if applicable), prospective financial information for the scheme, and the financial risks of entering into such a scheme. This exemption allows tailored disclosure that provides better information for investors in a real estate scheme than is provided by the provisions of the Securities Regulations 1983; and
  - this exemption is consistent with the policy of the Commission in relation to proportionate property ownership schemes.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 31 August 2006.  
This notice is administered by the Securities Commission.

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