



Securities Act (Five Mile Holdings Limited) Exemption Notice 2007

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 (Five Mile Holdings Limited) Exemption Notice 2007.
- 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 August 2012.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

communal facilities means the following facilities that are owned, leased, licensed, maintained, held, levied, or operated in whole or in part by the society:

- (a) any land, or any right over, or interest in, land, within the development (including public or private access roads) that is designated by the developer or the society for use by the owners or occupiers of developed properties, by invitees, or by certain classes of those persons:
- (b) buildings, chattels, fixtures, fittings, plant, equipment, and other amenities used, or intended, adopted, or designed for use, in connection with the use of the developed properties by those owners, occupiers, or invitees:
- (c) utilities

controlling member means the controlling member of the society in accordance with the rules

developed property means a property within the development for which a certificate of title has been or will be issued, or for which a computer register has been or will be created,—

- (a) for an estate in fee simple or leasehold under the Land Transfer Act 1952; or
- (b) for a stratum estate under the Unit Titles Act 1972

developer—

- (a) means Five Mile Holdings Limited; and
- (b) includes any assignee or successor in title of Five Mile Holdings Limited (in whole or in part) that continues the promotion and carrying out of the development

development means any residential and commercial development undertaken within the area situated at the corner of Kawarau Gorge Road and Grant Road, Queenstown, known as the Five Mile Township, and being the land in Computer Freehold Register OT17C/912, OT15A/1073, and OT15C/26 (Otago Registry), together with any additional land the developer acquires or uses for the development

offer means the offer of specified securities to the public

Regulations means the Securities Regulations 1983

rules means the rules and the constitution of the society

sale agreement means an agreement for the sale of a developed property

society means Five Mile Society Incorporated, a society incorporated under the Incorporated Societies Act 1908

specified securities means participatory securities in the form of membership of the society that—

- (a) confer rights to participate in the ownership and use of all or part of the communal facilities; and
- (b) are subscribed for by purchasers of developed properties in that part of the development consisting of Lot 2 DP 25073, being the land in title OT17C/912 (Otago Registry)

utilities means the following utilities and services:

- (a) sealed vehicle access over all roading within the development (including roading that is accessible to the public and that connects to the adjoining State highway);
 - (b) drainage reticulation connecting 1 or more developed properties to any sewage treatment plant or disposal system;
 - (c) waste water and storm water disposal systems;
 - (d) service lines connecting 1 or more developed properties to appropriate supply networks;
 - (e) underground domestic and irrigation water supply reticulation connecting 1 or more developed properties to any water supply system (including storage tanks and treatment facilities);
 - (f) any other utilities or services ancillary to the use or enjoyment of a developed property or the development.
- (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 Exemptions from sections 33(3), 37, 37A, 38A, and 54 of Act and Regulations (except regulation 8)

The developer, the society, and every person acting on behalf of either or both of them are exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and from the Regulations (except regulation 8) in respect of specified securities of which the developer or the society is an issuer.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) the developer has supplied to each subscriber for specified securities, before subscription, a copy of each of the following documents:
 - (i) the rules (including a copy of any agreement for the management of the society's affairs):
 - (ii) a specimen of any deed or agreement providing for the transfer of communal facilities from the developer to the society:
 - (iii) the proposed sale agreement relating to that subscriber:
 - (iv) a specimen of any lease agreement for communal facilities; and
 - (b) the developer has supplied to each subscriber for specified securities, before subscription, a document that prominently sets out—
 - (i) for each stage of the development, the intended communal facilities and when those facilities are intended to be transferred to the society; and
 - (ii) the material risks of those communal facilities not being transferred to, constructed by or for, or procured by, the society at each stage; and
 - (iii) a statement that—
 - (A) the developer and the controlling member have certain rights in relation to the society and the communal facilities; and
 - (B) further information regarding those rights is contained in the rules; and
 - (C) potential investors should seek professional advice before purchasing a developed property; and
 - (c) the specified securities are subscribed for by each subscriber entering into a sale agreement with the developer; and
 - (d) it is a term of the sale agreement that the specified securities can be obtained only on the purchase of a developed property and, on resale, must be sold with that developed property; and

- (e) deposit moneys paid by a subscriber for specified securities are held in any of the following trust accounts until the sale agreement becomes unconditional:
 - (i) a trust account operated by a solicitor under the Law Practitioners Act 1982; or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 1976; or
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967; and
- (f) in respect of any communal facility that the developer represents or agrees will be held by the society at the completion of a certain stage of the development,—
 - (i) the developer has executed in favour of the society a deed of transfer for that communal facility; and
 - (ii) it is a term of the offer that the deed of transfer is registered immediately after the subdivision of the undeveloped land and the issue of a separate certificate of title, or the creation of a computer register, for an estate in fee simple in respect of the land on which the communal facilities are to be situated; and
 - (iii) it is a term of the offer that the developer provides the deed of transfer to the society; and
- (g) if the development is advertised on the basis that the society will hold certain communal facilities at the completion of certain stages of the development or at the completion of the development, it is a term of the offer that the society holds those communal facilities at the completion of those stages or at the completion of the development (as the case may be); and
- (h) it is a term of the offer that the developer provides to a subscriber or a prospective purchaser of a developed property, within 5 working days of receiving a request, a copy of the most recent financial statements of the society; and
- (i) it is a term of the offer that the financial statements of the society are audited annually and distributed to members of the society as soon as is reasonably practicable after each audit is completed and, in any event, no later

- than 5 months after the end of each accounting period of the society; and
- (j) it is a term of the offer that the rules provide that all moneys paid to the society by its members under the rules are applied only for any or all of the following purposes:
- (i) constructing, purchasing, acquiring, holding, administering, operating, maintaining, upgrading, renewing, replacing, extending, and enhancing the communal facilities;
 - (ii) managing and administering the society and administering and enforcing the rules;
 - (iii) administering and enforcing a scheme for the regulation and control of matters relating to the use and enjoyment, repair, decoration, and landscaping of, and provision of services to, developed properties;
 - (iv) providing and maintaining services, utilities, facilities, and benefits to developed properties or for the development;
 - (v) providing for any incidental or other matters that the society considers are beneficial for members; and
- (k) it is a term of the offer that the rules provide that—
- (i) members of the society have the right to use and enjoy the communal facilities in accordance with the rules and any relevant deed; and
 - (ii) members of the society have the right to vote at meetings of the members of the society; and
 - (iii) on a winding up of the society, any interest of the society in the communal facilities vests in the members of the society as tenants in common and in accordance with the rules; and
 - (iv) levies, fees, or subscriptions payable to the society by its members are determined by a committee of members of the society in accordance with a procedure set out in the rules; and
- (l) the society does not have as objects—
- (i) the carrying on of trading activities; or
 - (ii) the carrying on of business for profit; and

- (m) it is a term of the offer that the rules provide that an independent mediator must be appointed to act in a dispute between any member of the society and the developer concerning the developer's compliance with the rules when exercising its powers, or performing its duties, as the controlling member or in its capacity as the developer, if at least 25% of all members of the society (excluding the developer and the controlling member) vote to appoint a mediator; and
- (n) it is a term of the offer that the rules provide that the society must provide to a member of the society, within 5 working days of receiving a request, a statement of levies, fees, or charges that are estimated to be, or were, payable by subscribers in relation to the development for the period beginning on the commencement date of this notice and ending on 31 August 2012 that—
 - (i) comprises estimates, historical data, or both; and
 - (ii) is itemised in relation to each of the different facilities and services provided in relation to the development; and
 - (iii) contains a statement in relation to each of those facilities and services as to whether the levy, fee, or charge payable for that facility or service is fixed, variable, or based on the capital value of the developed property; and
 - (iv) contains a statement as to which of those facilities and services were, or are expected to be, provided in each year within that period; and
 - (v) contains a statement as to what stage the development is at, or expected to be at, at the end of each year within that period; and
 - (vi) contains, if a levy, fee, or charge is based on the capital value of a developed property, a statement of a formula by which the levy, fee, or charge can be calculated, together with a worked example; and
 - (vii) contains a statement of the principal assumptions on which any estimates are based; and
- (o) a subscriber for specified securities has, before subscription, received a statement described in paragraph

- (n) if the relevant developed property is purchased from the developer.
- (2) After completion of the development, a condition in subclause (1)(j), (k), (m), or (n) ceases to apply if—
- (a) an amendment to the rules is approved by a special resolution passed by the members of the society (excluding the developer and the controlling member); and
 - (b) the amendment results in the rules no longer complying with the condition.

Dated at Wellington this 28th day of August 2007.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 August 2012.

This notice exempts Five Mile Holdings Limited (and any assignee or successor in title of that company), Five Mile Society Incorporated (the **society**), and any person acting on behalf of either or both of them, subject to conditions, from sections 33(3), 37, 37A, 38A, and 54 of the Securities Act 1978 (the **Act**) and from the Securities Regulations 1983 (except regulation 8) in respect of the offer of participatory securities in the form of membership of the society. Membership of the society confers rights to participate in the ownership and use of all or part of the communal facilities in a development undertaken in the Frankton Flats area of Queenstown.

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

- section 5(1)(b) of the Act exempts offers of land or an interest in land for which a separate certificate of title can be issued from compliance with Part 2 of the Act:
 - the securities offered are participatory securities, being membership of an incorporated society that will own, manage, or maintain communal facilities for the benefit of all members. These securities are ancillary to the ownership of land and are not intended for the purpose of investment, but rather confer ownership rights or rights to use the communal facilities in the development:
 - the conditions of the exemptions require that potential investors receive important information, prior to subscription, regarding the intended communal facilities and the risks that those communal facilities may not be owned by the society, and provide access to a dispute resolution mechanism if needed.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 30 August 2007.

This notice is administered by the Securities Commission.
