



THE SECURITIES ACT (REAL PROPERTY PROPORTIONATE OWNERSHIP SCHEMES) EXEMPTION NOTICE 1996

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

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 1996.

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

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

“The Act” means the Securities Act 1978:

“Certificate of title” means a certificate of title issued under the Land Transfer Act 1952 in respect of an undivided share or undivided shares in real property as a tenant in common:

“Generally accepted accounting practice” has the meaning given to that term by section 3 of the Financial Reporting Act 1993:

“Offeror” means a person who offers specified participatory securities to the public for subscription by or through a person who is—

(a) The holder of a licence issued in accordance with Part II of the Real Estate Agents Act 1976; or

(b) A trustee corporation:

“Proportionate ownership scheme” means a contributory scheme that involves the investment of money in such circumstances that—

(a) Each subscriber of specified participatory securities in the scheme will acquire an interest in the same real property, whether freehold or leasehold, through the issue of a certificate of title; and

(b) Each interest acquired under the scheme by a subscriber of specified participatory securities will comprise one or more undivided shares in the whole of the real property:

“Real property” means any estate or interest in land which is capable of registration under the Land Transfer Act 1952:

“Registered valuer” means a person who is a registered valuer within the meaning of the Valuers Act 1948:

“Specified participatory security” means a participatory security issued by an offeror in respect of a proportionate ownership scheme.

(2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—

- (a) That registered valuer and the offeror are relatives, one being the spouse of the other or being the parent, brother, sister or child of the other or of the spouse 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; or
 - (ii) A member, shareholder, or director of any company which is a holding company or a subsidiary of the offeror or which is a partner or joint venturer with the offeror; or
- (c) There is any other relationship or interest between the registered valuer and the offeror that is likely to influence the judgment of the registered valuer.

(3) 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. Offerors exempt from provisions of the Securities Act 1978 in the case of offers and allotments of specified participatory securities—(1) Subject to subclause (2) of this clause, every offeror and every person acting on behalf of that offeror are exempted from compliance with the provisions of sections 33, 37, 37A, and 51 to 54 of the Act in respect of every offer of specified participatory securities.

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

- (a) That it is a term of the contract entered into between the subscriber of the specified participatory securities and the offeror for the subscription and allotment of the specified participatory securities that upon the acquisition of the real property in accordance with the proportionate ownership scheme—
 - (i) The subscriber of the specified participatory securities will be issued with a certificate of title in respect of the subscriber’s interest in the real property; or
 - (ii) A trustee corporation or a nominee, acting on behalf of all the subscribers of the specified participatory securities, will be issued with a certificate of title in respect of the real property:
- (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) of this subclause has been entered into:
- (c) That all subscriptions for the specified participatory securities and any interest on those subscriptions are held in trust in a trust account until—
 - (i) Registrable title to the real property is obtained, for the purposes of the proportionate ownership scheme, by each

subscriber of specified participatory securities or is obtained on behalf of each subscriber by—

- (A) The offeror; or
 - (B) A trustee corporation, not being the offeror, acting on behalf of all subscribers of specified participatory securities; or
 - (C) A nominee acting on behalf of all subscribers of specified participatory securities; and
- (ii) The satisfaction of any other conditions relating to the receipt of subscriptions by the offeror contained in the contract referred to in paragraph (a) of this subclause; and
 - (iii) All the specified participatory securities offered in accordance with the proportionate ownership scheme are subscribed for in full:
- (d) The trust account referred to in paragraph (c) of this clause is audited at least annually and maintained by—
 - (i) A solicitor of the High Court of New Zealand; or
 - (ii) A trustee corporation or a person approved by the Commission to act as a trustee under section 48 of the Act; or
 - (iii) A person who is the holder of a licence issued in accordance with Part II of the Real Estate Agents Act 1976:
 - (e) That every subscriber of specified participatory securities has, before entering into the contract referred to in paragraph (a) of this subclause, been provided with a written statement signed by the offeror or, where the offeror is a body corporate, the directors of the offeror, and dated not more than 2 months prior to the subscriber's receipt of the written statement, which sets out the matters referred to in the First Schedule to this notice:
 - (f) That the offeror's written statement contains or has attached a copy of a report by an independent registered valuer that is signed by the registered valuer and dated not more than 5 months prior to the date of the offeror's written statement and that sets out the matters referred to in the Second Schedule to this notice:
 - (g) That every subscriber of specified participatory securities is to be provided annually with audited annual financial statements in respect of the performance, financial position, and cash flows of the proportionate ownership scheme no later than 3 months after the balance date of the proportionate ownership scheme.
-

SCHEDULES

FIRST SCHEDULE

MATTERS TO BE SPECIFIED OR CONTAINED IN OFFEROR'S STATEMENT

1. Description of real property—A description of the real property to be purchased by the subscribers for the purposes of the proportionate ownership scheme.

2. Material contracts relating to improvements to real property—
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,—
material details of the contracts relating to the building or improvements.

3. Purchase price—The purchase price to be paid for the real property.

4. Description of proportionate ownership scheme—A description of the proportionate ownership scheme and the interests in the proportionate ownership scheme being offered.

5. Remuneration of offeror relating to proportionate ownership scheme—The remuneration and other benefits the offeror will receive for establishing and promoting the proportionate ownership scheme and the manner in which this remuneration and other benefits are to be paid or provided.

6. Liabilities relating to proportionate ownership scheme—A description and, where practicable, quantification of all liabilities (including contingent liabilities) that a subscriber of specified participatory securities will or may incur as a holder of the specified participatory securities.

7. 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.

8. Land information memorandum relating to real property—Whether any matters referred to in a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 have been referred to the independent registered valuer for the purposes of the valuation report referred to in clause 3 (2) (f) of this notice, and a description of those matters.

9. 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.

10. Material details concerning rights of occupation of real property—(1) Material details concerning any rights of occupation to

FIRST SCHEDULE—*continued*MATTERS TO BE SPECIFIED OR CONTAINED IN OFFEROR'S STATEMENT—
continued

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 such 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 conferring a right of occupation.

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

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 which may affect the interests of subscribers of specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

13. Qualifications and experience of manager of proportionate ownership scheme—The qualifications and experience of the manager of the proportionate ownership scheme.

14. Interests of offeror, manager, promoter, and others—Where the offeror, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of the offeror or manager or promoter—

- (a) Is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership 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 proportionate ownership 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

FIRST SCHEDULE—*continued*MATTERS TO BE SPECIFIED OR CONTAINED IN OFFEROR'S STATEMENT—
continued

transaction relating to the proportionate ownership scheme or the real property; or

(d) Is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or

(e) Is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the real property,—

the following information:

(f) The names of the parties to the transaction and the date of the transaction; and

(g) A brief description of the material terms of the transaction; and

(h) The nature of the interest in the transaction.

15. 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 the subject of the proportionate ownership 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 which accords with generally accepted accounting practice and 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 which accords with generally accepted accounting practice and has been reviewed by a member of the Institute of Chartered Accountants of New Zealand.

16. Forecast financial statements—If the offeror's statement contains forecast financial information in respect of the proportionate ownership scheme, forecast 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 which—

(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.

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

18. Notice—The following notice in a prominent position at the front of the statement:

FIRST SCHEDULE—*continued*MATTERS TO BE SPECIFIED OR CONTAINED IN OFFEROR'S STATEMENT—
continued

“IMPORTANT NOTICE

You should seek professional advice before investing in the securities. This offer is exempt under the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 1996 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.”

19. Information about persons associated with proportionate ownership scheme—The names and contact addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) The offeror and the directors of the offeror;
- (b) The manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme;
- (c) The persons referred to in clause 3 (2) (d) (i) to (iii) of this notice;
- (d) The sales organisation (if any) through which the offer of specified participatory securities is made to the subscriber.

SECOND SCHEDULE

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 proportionate ownership scheme and for use by prospective subscribers of specified participatory securities.

4. Description of real property—A description of the real property the subject of the proportionate ownership scheme, and, where 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 any other estates or interests appearing 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.

SECOND SCHEDULE—*continued*MATTERS TO BE SPECIFIED IN INDEPENDENT REGISTERED VALUER'S REPORT—
continued

7. Compliance with regional or district plan rules—(1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the real property.

(2) Whether the intended use of the real property for the purposes of the proportionate ownership scheme complies with the rules, rights, consents, or other statutory requirements referred to in subclause (1).

8. Government valuation of real property—The value of the real property as shown on the most recent Government valuation of the real property and the date of that valuation.

9. Leasehold interests or tenancy arrangements in respect of real property—(1) Current rental payable, and a statement 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 such leasehold interests or tenancy arrangements.

10. Registered valuer's opinion as to value of real property—The opinion of the registered valuer as to the value of the real property 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 under clause 8 of the First Schedule to this notice.

12. Income from real property—The amount of income that the real property can reasonably be expected to produce on an annual basis under 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 which 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 of specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 10th day of December 1996.

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

[L.S.]

E. H. ABERNETHY,
Chairman.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

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

The notice applies to offers of participatory securities in certain contributory schemes for the ownership of undivided interests in real property.

The notice exempts such offers, subject to a number of conditions, from the prospectus 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 the First Schedule to the notice and with a report by a registered valuer that contains the information specified in the Second Schedule to the notice.

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

Date of notification in *Gazette*: 12 December 1996.

This notice is administered in the Securities Commission.