



**SECURITIES ACT (AUSTRALIAN REGISTERED MANAGED INVESTMENT SCHEMES) EXEMPTION NOTICE 1999**

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

ANALYSIS

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NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999.

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

(3) This notice expires on the close of 30 April 2004.

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

“Act” means the Securities Act 1978:

“Australian participatory securities” means participatory securities in the form of interests in an Australian registered scheme:

“Australian prospectus” means a document—

(a) That contains an offer of Australian participatory securities by a responsible entity; and

(b) That is identical to a document that is—

(i) Lodged or registered under the law of a specified State; and

(ii) Signed by the persons (if any) who are required by that law to sign that document; and

(c) By means of which it is lawful under the law of that specified State to make an offer of those Australian participatory securities to the public in that specified State; and

(d) That is the full prospectus relating to an offer of interests in an unlisted managed investment scheme made in a concise prospectus pursuant to Instrument 98/1421 made by the Australian Securities and Investments Commission (or any similar instrument made under the law of the specified State concerned):

“Australian registered scheme”—

(a) Means a managed investment scheme (within the meaning of section 9 of the Corporations Law) that is registered with the Australian Securities and Investments Commission under section 601EB of that law; but

(b) Does not include a time-sharing scheme:

“Corporations Law” means the Corporations Law of a specified State:

“Lodged” means lodged under the law of a specified State; and “lodgement” has a corresponding meaning:

“Registered” means registered under the law of a specified State; and “registration” has a corresponding meaning:

“Regulations” means the Securities Regulations 1983:

“Responsible entity” means the company named as the responsible entity or temporary responsible entity of an Australian registered scheme in the Australian Securities and Investments Commission’s record of the scheme’s registration:

“Specified State” means a State or Territory of the Commonwealth of Australia.

(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. Exemption**—(1) Every responsible entity and every person acting on the responsible entity’s behalf are exempted, in respect of Australian participatory securities of which the responsible entity is the issuer, from—

(a) Sections 33 (3), 37, and 37A (2) of the Act; and

(b) Section 38A of the Act and regulations 11 to 18, 21, and 22 of the Regulations; and

(c) Sections 51 to 54 of the Act.

(2) Subclause 1 (b) applies in respect of an Australian prospectus only, and not in respect of an investment statement or other advertisement.

(3) Every responsible entity and every person acting on the responsible entity’s behalf are exempted from section 38 (a) of the Act to the extent that it requires an Australian prospectus to refer to an investment statement.

**4. Australian prospectus**—The exemption granted by clause 3 (1) (a) and (b) is subject to the conditions that—

(a) There is an Australian prospectus relating to the Australian participatory securities at the time that offers of those securities are made or are open for acceptance in New Zealand; and

(b) It is a term of each offer of the Australian participatory securities made in New Zealand that the responsible entity will, within 5 working days of receiving an offeree’s request for a copy of the Australian prospectus relating to the securities concerned, without fee, send, or cause to be sent, to that offeree—

- (i) A copy of the Australian prospectus; and
- (ii) Copies of any documents that, under the law of the specified State concerned, must accompany a copy of the Australian prospectus sent to a person to whom an offer of the Australian participatory securities is made in that specified State.

**5. Documents to be deposited in Wellington**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that a copy of each of the following documents has been deposited with the Registrar of Companies at Wellington:

- (a) The Australian prospectus relating to the Australian participatory securities;
- (b) Any certificate or other document evidencing lodgement or registration of the Australian prospectus;
- (c) Any material contract that has been lodged or registered with the Australian prospectus or,—
  - (i) If the contract is not in writing, a copy of any memorandum that has been so lodged or registered and that contains particulars of the contract; or
  - (ii) If an exemption or declaration has been granted by the Australian Securities and Investments Commission under section 1084 of the Corporations Law, a copy of a memorandum that has been so lodged or registered and that contains particulars of the material contract prepared pursuant to that exemption or declaration;
- (d) The current licence of the responsible entity granted under section 784 of the Corporations Law;
- (e) The constitution of the Australian registered scheme and every amendment to it;
- (f) Evidence of registration of the Australian registered scheme with the Australian Securities and Investments Commission;
- (g) The current compliance plan relating to the Australian registered scheme and every amendment to it.

**6. Investment statements**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that any investment statement that relates to Australian participatory securities—

- (a) Includes, to the extent appropriate, statements to the following effect:
  - (i) That allotments of the Australian participatory securities will be made in the manner specified in the Australian prospectus and in the manner prescribed by the law of the specified State concerned; and
  - (ii) The name and address of the responsible entity of the Australian registered scheme and of any custodian engaged as agent by the responsible entity; and
  - (iii) That the responsible entity may not be subject in all respects to New Zealand law; and
  - (iv) That the contract in respect of the Australian participatory securities may not be enforceable in New Zealand courts; and

(v) That investors should satisfy themselves as to the tax implications of investing in the Australian participatory securities; and

(vi) That investing in Australian participatory securities may carry with it a currency exchange risk; and

(vii) That the financial reporting requirements applying in New Zealand and those applying in respect of the Australian registered scheme may be different, and the financial statements of the Australian registered scheme may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and

(viii) That, although a copy of the Australian prospectus and other documents have been deposited with the Registrar of Companies at Wellington, the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and

(ix) That Australian law does not require a trustee (unlike the position in New Zealand for unit trusts), or a statutory supervisor (unlike the position in New Zealand for contributory schemes involving participatory securities), that is separate from and independent of the responsible entity; and

(x) That a copy of the current compliance plan, and every amendment to it, is available for inspection at the office of the Registrar of Companies at Wellington, and can be obtained from the responsible entity; and

- (b) Complies with the provisions of the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to “registered prospectus” were references to the Australian prospectus.

**7. Offers to be made in Australia at same time**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that, at the same time as offers of the Australian participatory securities are made or are open for acceptance in New Zealand, offers of the Australian participatory securities are also made or are open for acceptance in the specified State concerned in accordance with the law of that specified State.

**8. Annual report to Commission**—The exemption granted by clause 3 (1) (a) and (b) in respect of Australian participatory securities offered after 31 March in any calendar year is subject to the further condition that, where the responsible entity has offered Australian participatory securities to the public in New Zealand during the preceding calendar year, the responsible entity has furnished to the Commission a written report in respect of that preceding calendar year that—

- (a) Specifies each Australian registered scheme in respect of which the responsible entity offered Australian participatory securities during that preceding calendar year; and

- (b) Specifies, in respect of each such Australian registered scheme,—

(i) The total amount of money raised in New Zealand in that preceding calendar year by the responsible entity by the offer of Australian participatory securities; and

- (ii) The total amount of New Zealand raised funds under management by the responsible entity as at the last day of that preceding calendar year; and
- (c) States, in respect of each such Australian registered scheme, whether the responsible entity intends to continue to offer Australian participatory securities to the public in New Zealand subject to the exemptions granted by this notice.

Dated at Wellington this 12th day of May 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 comes into force on the day after the date of its notification in the *Gazette* and expires on 30 April 2004. The notice exempts responsible entities of Australian registered managed investment schemes, subject to conditions, from the following provisions of the Securities Act 1978 and the Securities Regulations 1983:

- section 33 (3), which requires the appointment of a statutory supervisor, and a deed of participation, in relation to participatory securities
- sections 37 and 37A (2), which prohibit the allotment of securities offered to the public unless there is a registered prospectus relating to the securities, and which prescribe the minimum amount payable on application
- sections 51 to 54, which relate to the keeping of registers and accounting records, and the sending of certificates to securities holders
- sections 38 (a) and 38A, and regulations 11 to 18, 21, and 22, which contain requirements as to the content of advertisements and registered prospectuses.

This notice is based on the Securities Act (Australian Unit Trusts) Exemption Notice 1997, which applies to managers of unit trusts established under the law of any State or Territory of the Commonwealth of Australia. However, this notice takes into account changes to the Australian funds management industry effected by the Managed Investments Act 1998. Under that Act, the roles of manager and trustee in respect of managed investment schemes are merged, and are performed by a single entity called the "responsible entity".

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 13 May 1999.  
This notice is administered in the Securities Commission.