



Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003

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

Contents

<p>1 Title</p> <p>2 Commencement</p> <p>3 Expiry</p> <p>4 Interpretation</p> <p>5 Exemptions</p> <p>6 Conditions of exemptions in clause 5(1)(a) and (c) and (2)(a) and (c)</p> <p>7 Conditions of exemptions in clause 5(1)(b) and (2)(b)</p> <p>8 Further conditions applying to investment statements and product disclosure statements</p> <p>9 Annual report to Commission</p> <p>10 Exemption for distribution reinvestment schemes</p>		<p>11 Conditions of exemption in clause 10</p> <p>12 Expiry date of Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999 amended</p> <p>13 Transitional provision</p>
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Schedule
Form of statement under heading
Important Information for New
Zealand Investors

Notice

- 1 Title**

This notice is the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003.
- 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 30 September 2008.

4 Interpretation

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

Act means the Securities Act 1978

Australian disclosure document means a document—

(a) that contains—

(i) an offer of Australian participatory securities by a responsible entity; or

(ii) an offer of Australian participatory securities that have been previously allotted by a responsible entity, by the holder of those securities; and

(b) that is—

(i) a product disclosure statement that complies with the laws of Australia; or

(ii) a prospectus within the meaning of section 9 of the Corporations Act 2001; and

(c) by means of which it is lawful under the laws of Australia to accept applications for securities offered under that document; and

(d) that is applicable to the offer of the Australian participatory securities in New Zealand

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

Australian registered scheme means a managed investment scheme (within the meaning of section 9 of the Corporations Act 2001) that is registered with the Australian Securities and Investments Commission under section 601EB of that Act

Corporations Act 2001 means the Corporations Act 2001 of the Commonwealth of Australia

lodged means lodged under the laws of Australia

product disclosure statement has the same meaning as in the Corporations Act 2001

registered means registered under the laws of Australia

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

supplementary disclosure document means—

- (a) a supplementary product disclosure statement; or
- (b) a supplementary or replacement document lodged with the Australian Securities and Investments Commission under section 719 of the Corporations Act 2001

supplementary product disclosure statement has the same meaning as in the Corporations Act 2001.

- (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

- (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 37A(1)(a) of the Act; and
 - (c) section 38A of the Act and regulations 11 to 18, 21, and 22 of the Regulations; and
 - (d) section 38(a) of the Act to the extent that it requires an Australian disclosure document to refer to an investment statement; and
 - (e) sections 51 to 54 of the Act.
- (2) Every person who is the holder of Australian participatory securities that have been previously allotted by a responsible entity and every person acting on behalf of that holder are exempted, in respect of those securities, from—
 - (a) sections 33(3), 37, and 37A(2) of the Act; and
 - (b) section 37A(1)(a) of the Act; and
 - (c) section 38A of the Act and regulations 11 to 18, 21, and 22 of the Regulations; and
 - (d) section 38(a) of the Act to the extent that it requires an Australian disclosure document to refer to an investment statement; and
 - (e) sections 51 to 54 of the Act.
- (3) Subclauses (1)(c) and (2)(c) apply only in respect of an Australian disclosure document, and not in respect of an investment statement or other advertisement.

6 Conditions of exemptions in clause 5(1)(a) and (c) and (2)(a) and (c)

- (1) The exemptions in clause 5(1)(a) and (c) and (2)(a) and (c) are subject to the conditions that—
- (a) there must be an Australian disclosure document relating to the Australian participatory securities at the time that offers of those securities are made or are open for acceptance in New Zealand in reliance on any exemption in clause 5; and
 - (b) before the first offer of any Australian participatory securities in an Australian registered scheme is made or open for acceptance in New Zealand in reliance on any exemption in clause 5, a copy of each of the following documents relating to that scheme has been received by the Registrar of Companies:
 - (i) the Australian disclosure document relating to the Australian participatory securities;
 - (ii) any document, or part of a document, lodged or registered with the Australian Securities and Investments Commission that is referred to in the Australian disclosure document and is taken to be included in that document under the Corporations Act 2001;
 - (iii) any exemption, order, or declaration that has been granted by the Australian Securities and Investments Commission in respect of that Australian registered scheme (other than any exemption, order, or declaration that applies to Australian registered schemes generally or to a class of persons);
 - (iv) the licence of the responsible entity granted under the Corporations Act 2001;
 - (v) the constitution of the Australian registered scheme;
 - (vi) evidence of registration of the Australian registered scheme with the Australian Securities and Investments Commission;
 - (vii) the compliance plan required under the laws of Australia relating to the Australian registered scheme;

- (viii) any documents that amend or supplement any of the documents referred to in subparagraphs (i) to (vii) in existence at the time that the first offer of any Australian participatory securities in that Australian registered scheme is made or open for acceptance in New Zealand in reliance on any exemption in clause 5; and
- (c) a copy of any document that amends, supplements, or replaces the document referred to in paragraph (b)(i) (other than a document in relation to which a copy must be received under paragraph (b)(viii)) has been received by the Registrar of Companies before any allotment of Australian participatory securities is made in New Zealand after the amendment, supplement, or replacement takes effect; and
- (d) at the same time as offers of the Australian participatory securities are made or are open for acceptance in New Zealand in reliance on any exemption in clause 5, offers of the Australian participatory securities are also made or are open for acceptance in Australia in accordance with the laws of Australia; and
- (e) the only material differences (if any) between the Australian disclosure document that is used in New Zealand and the equivalent document that is used in Australia relate to 1 or more of the following matters:
 - (i) the inclusion in the Australian disclosure document that is used in New Zealand of the statements and information that are required by this notice to be contained in, or to accompany, that document;
 - (ii) the exclusion from the Australian disclosure document that is used in New Zealand of statements or information in connection with interests in Australian registered schemes not offered in New Zealand;
 - (iii) the exclusion from the Australian disclosure document that is used in New Zealand of statements or information in connection with securities not offered in New Zealand; and
- (f) it is a term of each offer of the Australian participatory securities made in New Zealand that the person who

- makes the offer will, within 5 working days of receiving an offeree's request for a copy of the Australian disclosure document relating to the securities concerned, without fee, send, or cause to be sent, to that offeree—
- (i) a copy of the Australian disclosure document; and
 - (ii) copies of any documents that, under the laws of Australia, must accompany a copy of the Australian disclosure document sent to any person to whom an offer of the Australian participatory securities is made in Australia; and
 - (iii) a copy of any document, or part of a document, lodged or registered with the Australian Securities and Investments Commission that is referred to in the Australian disclosure document and is taken to be included in that document under the Corporations Act 2001; and
 - (iv) a copy of any supplementary disclosure document in use at the time that the request is received.
- (2) The exemptions from section 33(3) of the Act in clause 5(1)(a) and (2)(a) are subject to the condition that a copy of any document that amends or replaces any of the documents referred to in subclause (1)(b)(ii) to (vii) (other than a document in relation to which a copy must be received under subclause (1)(b)(viii)) has been received by the Registrar of Companies within 5 working days of,—
- (a) the date on which the document is registered or lodged with the Australian Securities and Investments Commission; or
 - (b) if the document is not registered or lodged with the Australian Securities and Investments Commission and is received by the responsible entity from the Australian Securities and Investments Commission, the date that the document is received by the responsible entity from the Australian Securities and Investments Commission; or
 - (c) in the case of any other document that is not registered or lodged with the Australian Securities and Investments Commission, the date of the document.

- (3) The conditions in subclauses (1)(b) and (c) and (2) do not apply, in respect of a document, to the offer of any security that is made after a copy of that document has been received by the Registrar of Companies.
- (4) For the purposes of subclause (1)(c), an amendment, supplement, or replacement in relation to a product disclosure statement takes effect on the last day for filing a product disclosure statement “in use” notice under section 1015 of the Corporations Act 2001 for the document that amends, supplements, or replaces the product disclosure statement.

7 Conditions of exemptions in clause 5(1)(b) and (2)(b)

- (1) The exemptions in clause 5(1)(b) and (2)(b), in respect of any Australian participatory security offered in New Zealand for subscription, are subject to the conditions that—
 - (a) no allotment of the security is made if the subscriber has not received, before subscribing for that security,—
 - (i) a product disclosure statement relating to that security; and
 - (ii) every supplementary product disclosure statement relating to that security in use at the time of the offer in New Zealand to the public; and
 - (b) the product disclosure statement contains, or is accompanied by, a statement in the form set out in the Schedule under the heading “Important Information for New Zealand Investors”.
- (2) A statement contained in, or accompanied by, a product disclosure statement for the purposes of subclause (1)(b) is not invalid just because it contains immaterial differences from the form set out in the Schedule as long as the statement still has the same effect and is not misleading.

8 Further conditions applying to investment statements and product disclosure statements

- (1) The exemptions in clause 5(1)(a) and (c) and (2)(a) and (c) are subject to the condition that the investment statement or, if there is no investment statement, the product disclosure statement for the offer of the Australian participatory securities

made in New Zealand contains, or is accompanied by, statements or information to the following effect under the heading “Important Information for New Zealand Investors”:

- (a) that allotments of the Australian participatory securities will be made in the manner specified in the Australian disclosure document and in the manner prescribed by the laws of Australia; and
- (b) the name and address of the responsible entity of the Australian registered scheme, unless the responsible entity is the manager of the scheme and the information is provided in the Australian disclosure document or the investment statement; and
- (c) that the responsible entity and the person who makes the offer may not be subject in all respects to New Zealand law; and
- (d) information describing how returns to New Zealand investors are likely to be affected by New Zealand taxation rules and how, as a result, any forecast or projected returns may differ from the returns for Australian investors described in the Australian disclosure document; and
- (e) that, despite the information provided under paragraph (d), investors should satisfy themselves as to the tax implications of investing in the Australian participatory securities; and
- (f) that investing in Australian participatory securities may carry with it a currency exchange risk; and
- (g) 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
- (h) that, although a copy of the Australian disclosure document and other documents have been received by the Registrar of Companies, the Australian disclosure document 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

- (i) 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
- (j) a list of the types of documents relating to the Australian registered scheme that have been received by the Registrar of Companies in accordance with this notice and a statement that those documents can be inspected at the office of the Registrar of Companies and can be obtained from the responsible entity; and
- (k) information or statements to the following effect under the heading “Agreement as to Jurisdiction”:
 - (i) that, in respect of a dispute concerning an offer of Australian participatory securities offered in reliance on any exemption in clause 5 or the contract for the Australian participatory securities, the responsible entity and, if the offer is not made by the responsible entity, the person who makes the offer—
 - (A) agree to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) have instructed the New Zealand agent or agents for service referred to in subparagraphs (iii) and (iv) to accept service on the responsible entity’s or person’s behalf (as the case may be); and
 - (C) agree that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and.
 - (ii) that, despite the statements referred to in subparagraph (i), the contract in respect of the securities may not always be enforceable in New Zealand courts; and
 - (iii) the name and contact address of the person in New Zealand who has been appointed by the responsible entity to accept service in New Zealand of any document on its behalf; and

- (iv) if the offer is not made by the responsible entity, the name and contact address of the person in New Zealand who has been appointed by the person who makes the offer to accept service in New Zealand of any document on that person's behalf.
- (2) The exemptions in clause 5(1)(a) and (c) and (2)(a) and (c) are subject to the condition that any investment statement that relates to the Australian participatory securities refers to the Australian disclosure document when the Act or the Regulations require an investment statement to refer to a registered prospectus.
- (3) The conditions in subclauses (1) and (2) are not breached if there are differences between the information required under those subclauses to be in the investment statement or in the product disclosure statement and the information presented in that investment statement or in that product disclosure statement, but the differences are immaterial.

9 Annual report to Commission

The exemptions in clause 5 in respect of Australian participatory securities offered after 31 March in any calendar year (other than the exemptions from sections 37 and 37A(1)(a) and (2) of the Act) are subject to the condition that, if the responsible entity or the person who relies on those exemptions has offered Australian participatory securities to the public in New Zealand during the preceding calendar year, the responsible entity or that person (as the case may be) has sent 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 or person (as the case may be) offered Australian participatory securities during that preceding calendar year; and
- (b) specifies, in respect of each of those Australian registered schemes,—
 - (i) the total amount of money raised in New Zealand in that preceding calendar year by the responsible entity or person (as the case may be) by the offer of Australian participatory securities; and

- (ii) the total amount of New Zealand raised funds under management by the responsible entity or person (as the case may be) as at the last day of that preceding calendar year; and
- (c) states, in respect of each of those Australian registered schemes, whether the responsible entity or person (as the case may be) intends to continue to offer Australian participatory securities to the public in New Zealand in reliance on any exemption in clause 5.

10 Exemption for distribution reinvestment schemes

- (1) This clause applies to any Australian participatory securities allotted only to a person who already holds Australian participatory securities that are the same kind as the securities allotted and which are offered under a plan that—
 - (a) entitles that person to subscribe for those securities by applying all or any specified part of any distribution payable under the Australian registered scheme to that person; or
 - (b) requires the responsible entity to allot those securities to that person as fully-paid securities in consideration only for that person forgoing the right to receive all or any specified part of any distribution otherwise payable under the Australian registered scheme to that person; or
 - (c) involves the compulsory reinvestment of distributions to which the person is entitled under the Australian registered scheme towards the allotment of those securities as fully-paid securities.
- (2) Every responsible entity and every person acting on its behalf are exempted from sections 33(3), 37, 37A, 38A, and 51 to 54 of the Act and the Regulations (except regulation 8) in respect of any Australian participatory securities to which this clause applies.

11 Conditions of exemption in clause 10

- (1) The exemption in clause 10 is subject to the condition that, before the person referred to in clause 10 to whom Australian participatory securities are to be allotted subscribes for the

Australian participatory securities to which clause 10 applies, that person has received a document that contains—

- (a) an offer of securities under a distribution reinvestment scheme; and
 - (b) a description of the distribution reinvestment scheme and its terms and conditions; and
 - (c) a statement that the securities are to be allotted in accordance with the terms and conditions set out in the Australian disclosure document relating to the securities (if any) and the constitution for the scheme; and
 - (d) a statement that there is available from the responsible entity, on request and free of charge, a copy of—
 - (i) the most recent annual report of the scheme (if any); and
 - (ii) the most recent financial statements of the scheme (if any); and
 - (iii) the current Australian disclosure document relating to the securities (if any); and
 - (iv) the constitution of the scheme and any amendments to it; and
 - (e) a statement that, within 30 days of the day on which the Australian participatory securities are allotted to a person under the scheme, the person will be sent a statement of the amount of the distribution and the number of securities that have been allotted to that person.
- (2) The exemption in clause 10 is subject to the conditions that—
- (a) at the time the price of the Australian participatory securities is set, the responsible entity has no information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the security if the information were publicly available; and
 - (b) the offer of Australian participatory securities to which clause 10 applies is made to all persons in New Zealand who hold, or have applied to hold, securities of the same kind; and
 - (c) every person to whom the offer is made is given a reasonable opportunity to accept it; and
 - (d) the Australian participatory securities issued to the securities holders are—

- (i) issued on the terms disclosed to the holders; and
 - (ii) subject to the same rights as the securities issued to all holders of securities of the same kind who agree to receive the securities.
- (3) The exemption in clause 10 is subject to the condition that, at the same time as offers of the Australian participatory securities are made or are open for acceptance in New Zealand under the distribution reinvestment scheme in reliance on any exemption in clause 10, offers of the Australian participatory securities are also made or are open for acceptance in Australia in accordance with the scheme and the laws of Australia.

12 Expiry date of Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999 amended

Clause 1(3) of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999 is amended by omitting the expression “30 April 2004”, and substituting the expression “10 March 2004”.

13 Transitional provision

- (1) This clause applies to Australian participatory securities offered after this notice comes into force under an Australian disclosure document that is dated before the expiry of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999.
- (2) An offer and allotment of Australian participatory securities to which this clause applies may be made in accordance with either—
 - (a) this notice; or
 - (b) until 30 September 2004, the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999 as in force—
 - (i) on the date that the offer is made if the offer is made before the expiry of that notice; or
 - (ii) immediately before that notice expired as if that notice had not expired if the offer is made after the expiry of that notice.

cl 7(1)(b)

Schedule

Form of statement under heading **Important Information for New Zealand Investors**

Important Information for New Zealand Investors

(The information in this section is required under the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003.)

The document that this statement is contained in, or is accompanied by, is not an investment statement under New Zealand law. It is a product disclosure statement prepared under Australian law. There are likely to be differences between the information provided and the way that information is presented in the product disclosure statement as compared to an investment statement under New Zealand law.

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

Choosing an investment

When deciding whether to invest, consider carefully the answers to the following questions:

What sort of investment is this?

Who is involved in providing it for me?

How much do I pay?

What are the charges?

What returns will I get?

What are my risks?

Can the investment be altered?

How do I cash in my investment?

Who do I contact with enquiries about my investment?

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

What other information can I obtain about this investment?

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 document will tell you—

- whether the adviser gives advice only about particular types of investments; and

- whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- 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—

- if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- 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.

Dated at Wellington this 20th day of October 2003.

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

[L.S.]

C. A. N. Beyer,
Member.

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* and expires on 30 September 2008, replaces the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999.

The notice continues to exempt 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.

These exemptions have been extended to the holders of Australian participatory securities that have been previously allotted by the responsible entity.

The main change in this notice is to provide a further exemption in the case of offers that are made using a product disclosure statement in terms of the Corporations Act 2001 (Commonwealth of Australia). This exemption exempts responsible entities of Australian registered managed investment schemes and holders of previously allotted Australian participatory securities, subject to conditions, from section 37A(1)(a) of the Act. Section 37A(1)(a) of the Act requires an investment statement to be received by subscribers before subscribing for the security. If a person relies on this exemption and an investment statement is not provided, certain warnings and other information must be included in, or accompany, the product disclosure statement.

In effect, the notice enables disclosure to be made using—

- an Australian prospectus (that is not a product disclosure statement) and an investment statement; or
- a product disclosure statement and an investment statement;
or

- a product disclosure statement that includes certain important information for New Zealand investors.

This notice has also made significant changes to the condition relating to the provision of documents to the Registrar of Companies.

This notice also provides a new exemption for distribution reinvestment schemes. The exemption applies to Australian participatory securities that are allotted to persons who already hold securities of the same kind and which are offered under a plan that—

- entitles a person to subscribe for the securities by applying distributions payable to that person; or
- requires the responsible entity to allot the securities as fully paid in consideration for that person forgoing the right to receive distributions payable to that person; or
- involves the compulsory reinvestment of distributions to which the person is entitled towards the allotment of the securities as fully-paid securities.

The notice exempts responsible entities, in the case of those securities and subject to conditions, from sections 33(3), 37, 37A, 38A, and 51 to 54 of the Securities Act 1978 and the Securities Regulations 1983 (other than regulation 8).

This notice provides for a transitional regime for securities offered after this notice comes into force under an Australian disclosure document that is dated before the expiry of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999. Offers of those securities may be made in accordance with either that notice (until 30 September 2004) or this notice.

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

Date of notification in *Gazette*: 23 October 2003.

This notice is administered in the Securities Commission.
