



**THE SECURITIES ACT (TIMESHARE SCHEMES)
EXEMPTION NOTICE 1991**

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

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NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Timeshare Schemes) Exemption Notice 1991.

(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:

“Composite certificate of title” means a certificate of title issued under the Unit Titles Act 1972 comprising an undivided one-fifty-first share in a stratum estate in freehold together with an estate in leasehold in respect of a specified week at a timeshare resort:

“Offeror” means a company named in the First Schedule or the Second Schedule to this notice, as the case may be:

“Pooling agreement” means an agreement entered into by the subscribers for specified participatory securities under which each subscriber acquires rights and interests in respect of the timeshare weeks of all other subscribers:

“Scheme” means a scheme for the ownership of rights and interests in a timeshare resort in New Zealand including rights arising under a pooling agreement relating to the scheme:

“Specified participatory securities” means participatory securities issued by an offeror in respect of a scheme:

“Timeshare agreement” means a contract for the purchase of specified participatory securities from an offeror:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year, and ending with the 2nd day of January in the following year.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act, has the meaning given to it by the Act.

3. Certain persons exempt from provisions of the Securities Act 1978 in the case of offers and allotments of participatory securities—

(1) Subject to subclause (3) of this clause, every offeror named in the First Schedule to this notice, and every person acting on behalf of that offeror, is exempted from compliance with the provisions of sections 33 (3), 37, 37A, and 38 (a) to (c) of the Act in respect of offers of specified participatory securities.

(2) Subject to subclause (3) of this clause, every offeror named in the Second Schedule to this notice, and every person acting on behalf of that offeror, is exempted from compliance with the provisions of sections 33 (3), 37, 37A, and 38 (a) to (c) of the Act in respect of offers of specified participatory securities made before the close of the 31st day of October 1991.

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

- (a) That the offeror does not enter into a timeshare agreement unless—
 - (i) A composite certificate of title is able to be issued to the subscriber for specified participatory securities; and
 - (ii) The unit to which the agreement relates has been completed and furnished or refurbished, as the case may be:
- (b) That it is a condition of the timeshare agreement that a composite certificate of title will be issued to the subscriber for those securities:
- (c) That the timeshare agreement gives the subscriber for the securities the right to cancel the agreement at any time before 5 p.m. on the 5th working day after the day on which the agreement is entered into and in that event to receive repayment of any deposit without penalty or deduction:
- (d) That the offeror does not accept subscriptions for specified participatory securities unless a timeshare agreement relating to the securities has been entered into:
- (e) That subscriptions for specified participatory securities are held in trust in an audited trust account 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— pending delivery to the subscriber or to a financier nominated by that subscriber, of a composite certificate of title, an executed memorandum of lease, a copy of the pooling agreement, and a registrable memorandum of transfer in respect of the estate or interest in the unit to which the specified participatory securities relate that names the subscriber or financier as the transferee:
- (f) That the amount that may be forfeited and retained by the offeror in the event of any failure by a subscriber to complete the purchase of the specified participatory securities does not exceed 10 percent of the price payable for the securities:
- (g) That the subscriber for the specified participatory securities is not prevented or restricted by the terms of the timeshare agreement,

the pooling agreement, or the memorandum of lease from selling or disposing of—

- (i) The specified participatory securities; or
 - (ii) The estate or interest in the unit to which the securities relate; or
 - (iii) Any other rights and interests under the timeshare agreement or the pooling agreement, or the memorandum of lease:
- (h) That rentals received from the exercise by the offeror of any right to rent unreserved pooled timeshare weeks shall, after reasonable deduction for any administrative costs has been made by the manager of the scheme, be paid to or for the benefit of some or all subscribers of specified participatory securities:
- (i) That every person has, before entering into a timeshare agreement, been given a written statement signed by the directors of the offeror and the promoter, if any, that—
- (i) Describes the nature of a subscriber's rights and interests in the scheme; and
 - (ii) States prominently on the first page of the statement or on the cover, if it has one, that the person has the right to cancel the agreement at any time before 5 p.m. on the 5th working day after the day on which the agreement is entered into and to receive repayment of any deposit without penalty or deduction; and
 - (iii) Gives particulars of any mortgages or other charges or encumbrances against—
 - (A) Any certificate of title (including a composite certificate of title) which is in the name of the offeror and relates to any principal unit on any unit plan registered under the Unit Titles Act 1972 in connection with the scheme; or
 - (B) Any certificate of title relating to any future development unit shown on any such unit plan; or
 - (C) Any furnishings, improvements, or other chattels which are contained in any unit to which the securities relate or which form part of any recreational or communal facilities which form part of the scheme; and
 - (iv) States the nature of any exchange rights with other timeshare developments whether in New Zealand or elsewhere; and
 - (v) States the names and addresses of the following persons associated with the scheme and describes 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 or the manager of the scheme:
 - (C) The solicitor, corporation, or person referred to in paragraph (e) of this subclause:
 - (D) The sales organisation (if any) through whom the offer of the securities is to be made to the subscriber; and

(vi) Contains an explanation of the provisions of the Unit Titles Act 1972 relating to bodies corporate constituted by virtue of that Act; and

(vii) States whether any of the persons who will have the right to exercise the powers and duties of the committee of the body corporate include the offeror or the manager of the scheme or any persons that are associated with such persons; and

(viii) Contains a summary of the material terms of the contract of employment of any person appointed to manage the operation of the scheme and states whether that person and the offeror are related or associated persons; and

(ix) States the maximum price payable for the sale of an interest in the scheme; and

(x) States the nature of any recreational and communal facilities which form part of the scheme and the rights of the holders of specified participatory securities in relation to those facilities; and

(xi) Contains a statement by the directors of the offeror or, where the offeror is in receivership, a statement by the receiver of the offeror, that, after due enquiry by them from the body corporate constituted in connection with the scheme by the Unit Titles Act 1972, and otherwise, they are of the opinion that, as at the date of the offer of specified participatory securities, the assets of the body corporate are greater than its liabilities, and that it is able to pay its debts as they become due; and

(xii) Contains details of any insurance provisions relating to the scheme; and

(xiii) Contains details as to any proposed future developments in relation to the scheme; and

(xiv) Contains a budget of anticipated expenditure in respect of the scheme for the financial year in which the offer is made; and

(xv) Contains an estimate of the charges payable by a subscriber in the financial year in which the offer is made and the procedures applying for altering the level of those charges in subsequent financial years; and

(xvi) Contains a statement of all other material matters relating to the scheme; and

(xvii) Is accompanied by copies of all material agreements except that it shall be sufficient compliance with the requirements of this subparagraph in respect of the memorandum of lease and the rules of the body corporate, if the statement contains an undertaking to provide copies of those documents free of charge to prospective purchasers upon request:

- (j) That the information contained in the statement described in paragraph (i) of this subclause is accurate as at the date of any offer of specified participatory securities and as at the date of acceptance of any such offer.

4. Revocation—The Securities Act (Club Pacific Queenstown) Exemption Notice 1991* is hereby revoked.

SCHEDULES

FIRST SCHEDULE

Baycentre Commercial Limited
 Busby Manor Limited
 Chalet Inns New Zealand Limited
 Colony Resorts Limited
 Herbert Bruce Armitage
 Byron Buchanan
 Robert Eric William Buchanan
 Linda J Beazley
 Mark Daniel Beazley
 John Alexander Frizzell
 James Patrick Gallagher
 Henry Ian Moffat
 Barry Austin Sweet
 Kaimanawa Corporation Limited
 Lakemount View Limited
 Monad Leisuretime Limited
 Mt. Hutt Resort Limited
 Remarkable Resort (Holiday Ownership) Limited
 Trevola Properties Limited
 Turner Heights Townhouses Limited

} Collectively
known as the
Fairway Lodge
Partnership

SECOND SCHEDULE

A. N. Watson Limited (In Receivership)
 Club Lavaud Limited
 Leisure Resorts (Australasia) Limited

Dated at Wellington this 20th day of August 1991.

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

[L.S.]

P. D. McKENZIE,
Chairman.

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*, exempts, subject to certain conditions, the persons named in the First and Second Schedules to the notice from the prospectus requirements of the Securities Act 1978 in respect of offers of participatory securities in timeshare schemes in respect of which subscribers for such securities are required to enter into a pooling agreement (as that term is defined).

In the case of the persons named in the Second Schedule to the notice the exemption is limited to offers made before the close of 31 October 1991.

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

Date of notification in *Gazette*: 22 August 1991.

This notice is administered in the Securities Commission.