



SECURITIES ACT (BUILDING SOCIETIES) EXEMPTION NOTICE 1997

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

NOTICE

1. Title, commencement, and expiry—(1) This notice may be cited as the Securities Act (Building Societies) Exemption Notice 1997.

(2) This notice comes into force on 1 October 1997.

(3) This notice expires on the close of 30 September 2002.

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

“Act” means the Securities Act 1978:

“Building society” has the same meaning as in section 2 of the Building Societies Act 1965:

“Building society share” means a share issued, or to be issued, by a building society pursuant to section 11 of the Building Societies Act 1965; but does not include a share which carries the right to payment of any dividend, or on which interest is payable from the annual surplus of the society, and which is irredeemable or redeemable only at the option of the society:

“Designated building society” means a building society named in the Schedule of this notice and which has, as its principal business, the provision of any or all of the services listed in subparagraphs (i) to (x) (except subparagraph (viii)) of section 9A (1) (a) of the Building Societies Act 1965:

“Regulations” means the Securities Regulations 1983:

“Specified participatory security” means a participatory security in the form of a building society share.

(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 relating to specified participatory securities—

(1) Every designated building society, and every person acting on its behalf, is exempted from sections 33 (3) and 53 to 53F of the Act and regulations 3 (3), 7A (1), and 14 (2) of the Regulations in respect of any specified participatory securities offered by the building society in the course of carrying on its principal business.

(2) The exemptions granted by subclause (1) are subject to the conditions—

- (a) That the designated building society has appointed a person as a trustee in respect of the specified participatory securities; and
- (b) That both the building society and that person have signed a trust deed relating to the securities, which applies as if the specified participatory securities were debt securities; and
- (c) That the provisions of the Act and the Regulations relating to trust deeds are complied with; and
- (d) That the trust deed is, at the date of allotment of the specified participatory securities, in full force and effect; and
- (e) That the designated building society complies with sections 53 to 53F of the Act in all respects as if the specified participatory securities were debt securities; and
- (f) That every registered prospectus that relates to the specified participatory securities contains all of the information, statements, certificates, and other matters specified in the Second Schedule of the Regulations that are applicable, in all respects as if the specified participatory securities were debt securities; and
- (g) That every investment statement that relates to the specified participatory securities contains all of the information, statements, and other matters specified in Schedule 3D of the Regulations that are applicable, in all respects as if the specified participatory securities were debt securities; and
- (h) That, if at the time that the offer is made, the aggregate amount of any obligations of the designated building society that are secured by a mortgage or charge created by the society over any of its assets and that rank or will, after the allotment of the specified participatory securities, rank in priority to such securities, is material in the context of the society's overall business, no advertisement refers to those securities without also stating either that the securities are unsecured or the nature and ranking in point of security of the securities.

4. Exemption relating to debt securities—(1) Every designated building society, and every person acting on its behalf, is exempted from regulation 14 (1) of the Regulations in respect of any debt securities of which that building society is the issuer.

(2) The exemption granted by subclause (1) is subject to the condition that the aggregate amount of any obligations of the building society that are secured by a mortgage or charge created by the society over any of its assets and that rank or will, after the allotment of the debt securities, rank in priority to such securities, is not material in the context of the society's overall business.

5. Exemption relating to register of securities—(1) Every designated building society is exempted from section 52 (1) and (3) of the Act in respect of specified participatory securities registered on the register kept by that building society under section 51 (1) (c) of the Act.

(2) The exemption from section 52 (1) of the Act granted by subclause (1) is subject to the condition that the register is, except when duly closed (but subject to such reasonable restrictions as the building society may

impose, so that not less than 2 hours in each day shall be allowed for inspection), open to the inspection of any holder of specified participatory securities entered on the register, or the representative of the holder, in respect of the securities of that holder, without fee.

(3) The exemption from section 52 (3) of the Act granted by subclause (1) is subject to the condition that, upon payment by any holder of specified participatory securities of the fee prescribed for the purposes of section 52 (4) of the Act, the designated building society provides to that holder a copy of that part of the register kept under section 51 (1) (c) of the Act that relates to specified participatory securities of that holder.

6. Exemption relating to certificates—(1) Every designated building society is exempted from section 54 of the Act in respect of debt securities and specified participatory securities issued by that building society.

(2) The exemption granted by subclause (1) is subject to the condition that the designated building society sends, or causes to be sent, to the security holder at any time upon request and at least once every 6 months, a written statement which properly evidences the nature and ownership of the security.

SCHEDULE

Ashburton Loan and Building Society
Ashburton Permanent Building Society
Heretaunga Permanent Building Society
Napier Building Society (Permanent)
Nelson Building Society
Southern Cross Building Society
Southland Building Society
The Hastings Permanent Building and Investment Society
The Westport Building and Investment Society
Wairarapa Building Society

Dated at Wellington this 29th day of September 1997.

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

[L.S.]

M. R. H. WEBB,
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 1 October 1997 and expires on 30 September 2002, replaces the Securities Act (Building Societies) Exemption Notice (No. 2) 1990. This notice is required as a result of the coming into force, on 1 October 1997, of new disclosure and other requirements under the Securities Act 1978.

Clause 3 exempts designated building societies from sections 33 (3) and 53 to 53F of the Securities Act 1978 and regulations 3 (3), 7A (1), and 14 (2) of the Securities Regulations 1983 in the case of specified participatory securities (as that term is defined) offered in the course of carrying on their principal business. The general effect of the exemptions is to treat the specified participatory securities, for the purposes of the Act and the Regulations, as if they were debt securities. Therefore, the exemptions are subject to the conditions that the building society—

- (a) Appoints a trustee in respect of the securities, and complies with the provisions of the Act and the Regulations relating to trust deeds; and
- (b) Complies with certain other provisions of the Act and the Regulations as if the specified participatory securities were debt securities.

Clause 4 exempts designated building societies from regulation 14 (1) of the Regulations. Regulation 14 (1) requires advertisements for debt securities to state either that the securities are secured or the nature and ranking of the securities. This exemption is subject to the condition that the aggregate amount of the obligations of a building society secured by any mortgage or charge over its assets and that rank or would rank ahead of the debt securities is not material in the context of the society's overall business.

Clause 5 exempts, subject to conditions, designated building societies from section 52 (1) and (3) of the Act in relation to specified participatory securities registered on the register required to be kept under section 51 (1) (c) of that Act.

Clause 6 exempts, subject to conditions, designated building societies from section 54 of that Act in respect of debt securities and specified participatory securities.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 1997.
This notice is administered in the Securities Commission.