



SECURITIES ACT (SUPERANNUATION SCHEMES) 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 (Superannuation Schemes) Exemption Notice 1997.

(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 28 February 1999.

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

“Act” means the Securities Act 1978:

“Regulations” means the Securities Regulations 1983:

“Specified superannuation trustee”, in relation to a superannuation scheme, means a superannuation trustee that has not registered and is not required to register, under the Financial Reporting Act 1993, audited financial statements for the most recently completed accounting period for the scheme.

(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 for superannuation trustees—Every specified superannuation trustee, and every person acting on its behalf, are exempted from section 37A (1) (c) (iii) of the Act in respect of interests in a superannuation scheme of which the superannuation trustee is the issuer.

4. Conditions—(1) The exemption is subject to the condition that no allotments of interests in the superannuation scheme are made later than any of the following:

(a) If the registered prospectus relating to the offer of interests in the superannuation scheme contains or refers to audited financial statements for the most recently completed accounting period for the scheme that comply with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993) and the Superannuation Schemes Act 1989,—

- (i) Nine months after the date of the statement of financial position included in those financial statements; or
 - (ii) If the scheme has an accounting period ending on 31 March, 12 months after the date of the statement of financial position included in those financial statements:
- (b) If the registered prospectus contains, in addition to the financial statements referred to in paragraph (a), interim financial statements prepared as at a later date (not being more than 9 months after the date of the statement of financial position referred to in that paragraph) that comply with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993) and the Superannuation Schemes Act 1989, except that they need not be audited, 9 months after the date of the interim statement of financial position included in those interim financial statements:
 - (c) If the registered prospectus contains the financial statements referred to in paragraph (a), 7 months after the date of the certificate referred to in clause 5.
- (2) The exemption is subject to the further condition that the registered prospectus contains a statement by the specified superannuation trustees (or, if the specified superannuation trustee is a body corporate or unincorporate, by the directors of that body) as to whether, in their opinion, after due enquiry by them,—
- (a) The value of the scheme's assets relative to its liabilities (including contingent liabilities); and
 - (b) The ability of the scheme to pay its debts as they become due in the normal course of business—
- has materially and adversely changed during the period between the balance date of the latest financial statements referred to in subclause (1) and the specified date.

5. Certificate by directors—For the purposes of clause 4 (1) (c), a specified superannuation trustee may deliver to the Registrar for registration a certificate that—

- (a) Is signed on behalf of the directors by at least 2 directors of the superannuation trustee (or, if the superannuation trustee has only 1 director, by that director); and
- (b) Is dated no later than 9 months after the date of the statement of financial position contained or referred to in the registered prospectus; and
- (c) States that, in the opinion of all the directors of the superannuation trustee after due enquiry by them,—
 - (i) The financial position shown in the statement of financial position has not materially and adversely changed during the period from the date of the statement of financial position; and
 - (ii) The registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

Dated at Wellington this 19th day of December 1997.

The Common Seal of the Securities Commission was 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* and expires on 28 February 1999.

The notice exempts trustees of certain superannuation schemes from section 37A (1) (c) (iii) of the Securities Act 1978 in the case of allotments of interests in those schemes.

The effect of the exemption is to extend the period in which interests in the schemes may be allotted.

At present, if a superannuation scheme is not required to register financial statements under the Financial Reporting Act 1993, the period within which interests in the scheme may be allotted is limited to 6 months after the date of the registered prospectus that contains the offer.

The exemption will enable interests in these schemes to be allotted—

- (a) Within 9 months after the date of the statement of financial position included in financial statements that are, in turn, contained or referred to in the prospectus or, in the case of schemes with a 31 March balance date, within 12 months after the date of the statement of financial position;
- (b) Within 9 months after any interim statement of financial position included in interim financial statements that are, in turn, contained or referred to in the prospectus; or
- (c) Within 7 months after the date of a certificate by the directors that complies with clause 5 of the notice.

The exemption places trustees of the schemes in a similar position to other issuers as regards the period of allotment.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 December 1997.
This notice is administered in the Securities Commission.

