



# Securities Act (Building Societies) Exemption Notice 2002

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

## Contents

1	Title	11	Exemption relating to receipt of investment statements
2	Commencement	12	Conditions of exemption under clause 11
3	Expiry	13	Exemption relating to register of securities
4	Interpretation	14	Condition of exemptions under clause 13
5	Exemption for specified participatory securities defined in clause 4(2)(a)	15	Exemption relating to certificates
6	Conditions of exemption under clause 5(2)	16	Condition of exemption under clause 15
7	Exemption for specified participatory securities defined in clause 4(2)(b)		
8	Conditions of exemption under clause 7(2)		
9	Exemption relating to debt securities		
10	Condition of exemption under clause 9		

—————  
**Schedule**  
**Designated building societies**

## Notice

- 1 Title**  
This notice is the Securities Act (Building Societies) Exemption Notice 2002.
- 2 Commencement**  
This notice comes into force on 1 October 2002.
- 3 Expiry**  
This notice expires on the close of 30 September 2007.

#### 4 Interpretation

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

**Act** means the Securities Act 1978

**address** means a postal or electronic address; and includes a Post Office box address, document exchange box number, fax number, and email address

**building society** has the same meaning as in section 2(1) of the Building Societies Act 1965

**building society share** means a share issued or to be issued by a building society under section 11 of the Building Societies Act 1965

**continuous issue** means an issue of debt securities or specified participatory securities of a kind that are continuously offered by a designated building society to the public for subscription

**designated building society** means a building society named in the Schedule and that 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.

(2) In this notice, unless the context otherwise requires, **specified participatory security** means,—

(a) in clauses 5 and 6, a building society share; but does not include a share that—

(i) carries the right to payment of a dividend from the annual surplus or accumulated reserves of the building society; and

(ii) is irredeemable or redeemable only at the option of the building society; and

(iii) entitles the holder to participate in the assets of the building society on liquidation after the payment of all its other liabilities; and

(b) in clauses 7 and 8, a building society share that—

(i) carries the right to payment of a dividend from the annual surplus or accumulated reserves of the building society; and

(ii) is irredeemable or redeemable only at the option of the building society; and

- (iii) entitles the holder to participate in the assets of the building society on liquidation after the payment of all its other liabilities; and
  - (c) in all other places where the term appears, a building society share.
- (3) 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 Exemption for specified participatory securities defined in clause 4(2)(a)**

- (1) In this clause and in clause 6, **specified participatory security** has the meaning set out in clause 4(2)(a).
- (2) Every designated building society and every person acting on its behalf are 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.

## **6 Conditions of exemption under clause 5(2)**

The exemptions in clause 5(2) are subject to the conditions—

- (a) that the 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 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 building society that are secured by a mortgage or charge created by the society over any of its assets and that rank or will rank, after the allotment of the specified participatory securities, before those 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.

## **7 Exemption for specified participatory securities defined in clause 4(2)(b)**

- (1) In this clause and in clause 8, **specified participatory security** has the meaning set out in clause 4(2)(b).
- (2) Every designated building society and every person acting on its behalf are exempted from sections 33(3) and 53 to 53F of the Act and regulations 3(3) and 7A(1) of the Regulations in respect of any specified participatory securities offered by the building society in the course of carrying on its principal business.

## **8 Conditions of exemption under clause 7(2)**

The exemption in clause 7(2) is subject to the conditions—

- (a) that the designated building complies with sections 53 to 53F of the Act as if the specified participatory securities were equity securities; and
- (b) that every registered prospectus that relates to the specified participatory securities contains—
  - (i) all of the information, statements, certificates, and other matters specified in the First Schedule of the Regulations that are applicable as if the

- specified participatory securities were equity securities; and
- (ii) a description, and (where practicable) quantification, of all liabilities (including potential and contingent liabilities) that a person will or may incur as a holder of specified participatory securities; and
  - (c) 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 as if the specified participatory securities were equity securities.

## **9 Exemption relating to debt securities**

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

## **10 Condition of exemption under clause 9**

The exemption in clause 9 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 rank, after the allotment of the debt securities, before those securities is not material in the context of the society's overall business.

## **11 Exemption relating to receipt of investment statements**

Every designated building society and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any offer of debt securities or specified participatory securities made as part of a continuous issue.

## **12 Conditions of exemption under clause 11**

- (1) The exemption in clause 11 is, in respect of any allotment of a debt security or specified participatory security made as part of a continuous issue, subject to the condition that the building society must not make the allotment unless the building society (or a person acting on its behalf) has, at least 3 working days before the subscriber subscribes for the debt security

or specified participatory security, sent an investment statement relating to the debt security or specified participatory security—

- (a) to an address specified by the subscriber for this purpose; or
  - (b) to the last address of the subscriber known to the building society.
- (2) The exemption in clause 11 is subject to the further condition that, if an investment statement relating to the debt security or specified participatory security is sent—
- (a) by fax, the fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient; or
  - (b) by other electronic means, the machine used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

### **13 Exemption relating to register of securities**

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.

### **14 Condition of exemptions under clause 13**

- (1) The exemption from section 52(1) of the Act in clause 13 is subject to the condition that the register is, except when duly closed (but subject to any reasonable restrictions that the building society may impose, so that not less than 2 hours in each day is 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.
- (2) The exemption from section 52(3) of the Act in clause 13 is subject to the condition that, on payment by any holder of specified participatory securities of the fee prescribed for the purposes of section 52(4) of the Act, the 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.

**15 Exemption relating to certificates**

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.

**16 Condition of exemption under clause 15**

The exemption in clause 15 is subject to the condition that the building society sends, or causes to be sent, to the security holder at any time on request and at least once every 6 months a written statement that properly evidences the nature and ownership of the security.

cl 4(1)

---

**Schedule**  
**Designated building societies**

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

Dated at Wellington this 27th day of September 2002.

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

[L.S.]

L. A. J. Kavanagh,  
Member.

---

### Explanatory note

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice comes into force on 1 October 2002 and expires on 30 September 2007. It replaces the Securities Act (Building Societies) Exemption Notice 1997. The provisions of that notice are carried forward with amendments to the definition of **specified participatory security**. The definition is expanded to include building society shares that approximate to equity securities. Broadly, the effect of the exemption contained in *clause 7* and the conditions of the exemption contained in *clause 8* is that these securities are treated as if they were equity securities for the purposes of the Securities Act 1978. In addition, certain drafting changes have been made to reflect current drafting practice.

---

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

Date of notification in *Gazette*: 30 September 2002.

This notice is administered in the Securities Commission.

---