



**THE SECURITIES ACT (BUILDING SOCIETIES) EXEMPTION
NOTICE (NO. 2) 1990**

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

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Building Societies) Exemption Notice (No. 2) 1990.

(2) This notice shall come into force on the 1st day of January 1991.

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

“The 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 to 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:

“The 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 which is not defined in this notice, but which is defined in the Act, shall have the meaning given to it by the Act.

3. Designated building societies exempt from certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of specified participatory securities—(1) Subject to subclause (2) of this clause, every designated building society, and every person acting on its behalf, is exempted from compliance with the

provisions of sections 33 (3) and 53 of the Act and regulations 3 (3) and 14 (2) of the Regulations in respect of any offer of specified participatory securities made in the course of carrying on the principal business of that building society.

(2) The exemptions granted by subclause (1) of this clause 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 section 53 of the Act in all respects as if the specified participatory securities were debt securities; and
- (f) That every registered prospectus that relates to an offer of specified participatory securities contains all of the information, statements, certificates, and other matters specified in the Second Schedule to the Regulations that are applicable, in all respects as if the specified participatory securities were debt securities; and
- (g) 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. Designated building societies exempt from regulation 14 (1) of the Securities Regulations 1983 in respect of offers of debt securities—(1) Subject to subclause (2) of this clause, every designated building society, and every person acting on its behalf, is exempted from compliance with the provisions of regulation 14 (1) of the Regulations in respect of any offer of debt securities of which that building society is the issuer.

(2) The exemption granted by subclause (1) of this clause 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. Designated building societies exempt from section 52 (1) and (2) of the Securities Act 1978 in relation to register of securities required to be kept under section 51 (1) (c) of that Act—(1) Subject to subclause (2) of this clause, every designated building society is exempted from compliance with the provisions of section 52 (1) and (2) 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) of this clause is subject to the condition that the register shall, 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), be open to the inspection of any holder of specified participatory securities registered therein, or the representative of the holder, in respect of the securities of that holder, without fee.

6. Designated building societies exempt from the provisions of section 54 of the Securities Act 1978 in respect of certain securities—

(1) Subject to subclause (2) of this clause, every designated building society is exempted from compliance with the provisions of 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) of this clause is subject to the condition that the designated building society shall send, or cause 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, ownership, terms, and conditions of the security.

7. Designated building societies exempt from certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of debt securities or specified participatory securities—

(1) Subject to subclause (2) of this clause, every designated building society, and every person acting on its behalf, is exempted from compliance with the provisions of sections 37A (1) (a) to (d) and 38 (a) and (b) of the Act and regulation 10 of the Regulations in respect of any offer of debt securities or specified participatory securities made in the course of carrying on the principal business of that building society.

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

(a) That copies of the registered prospectus relating to the debt securities or specified participatory securities are on display and available to members of the public during normal business hours at each place of business of the designated building society at which offers of the debt securities or specified participatory securities are made; and

(b) That at the date of allotment, the registered prospectus is not known by the designated building society, or any director of it, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

(3) For the purposes of this clause, the terms “debt security” and “specified participatory security” do not include a security which renews or varies the terms of an existing security.

8. Revocation—The Securities Act (Building Societies) Exemption Notice 1990* is hereby revoked.

SCHEDULE

Ashburton Loan and Building Society
Ashburton Permanent Building Society
Community Building Society
Countrywide Endeavour Building Society
Hastings Permanent Building and Investment Society
Heretaunga Permanent Building Society
Hibernian Permanent Building Society
Lyttelton Building Society
Napier Building Society (Permanent)
National Mutual Permanent Building Society
Nelson Building Society
Southern Cross Building Society
Southland Building and Investment Society
Wairarapa Building Society
Westport Permanent Building and Investment Society

Dated at Wellington this 17th day of December 1990.

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 1 January 1991, replaces the Securities Act (Building Societies) Exemption Notice 1990.

The notice applies to designated building societies, i.e. those building societies named in the Schedule, and whose principal business is to provide any or all of the services referred to in section 9A (1) (a) (i) to (x) (except subparagraph (viii)) of the Building Societies Act 1965. The only difference between the existing notice and the new notice in this respect is that the Wanganui Rangitikei Building Society and the United Building Society are omitted from the Schedule.

Clause 3 exempts designated building societies from compliance with the provisions of sections 33 (3) and 53 of the Securities Act 1978 and regulations 3 (3) and 14 (2) of the Securities Regulations 1983 in the case of offers of specified participatory securities (as that term is defined) made 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.

The exemption in the case of offers of debt securities contained in *clause 3* of the existing notice is not carried over.

Clause 4 is new and exempts those building societies from the requirements of 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.

The exemptions contained in *clauses 5 to 7* are identical to the exemptions contained in *clauses 4 to 6* of the existing notice.

Clause 5 exempts those building societies from compliance with the provisions of section 52 (1) and (2) of the Securities Act 1978 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 those building societies from compliance with section 54 of that Act in respect of debt and specified participatory securities.

Clause 7 exempts those building societies from compliance with the provisions of sections 37A (1) (a) to (d) and 38 (a) and (b) of the Securities Act 1978 and regulation 10 of the Securities Regulations 1983 in the case of offers of debt securities and specified participatory securities. This exemption is subject to the conditions—

- (a) That copies of the registered prospectus relating to the securities are on display and available to the public at each place of business of the building society during normal business hours; and
- (b) That at the date of allotment, the registered prospectus is not known by the building society, or any director of it, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became misleading as a result of circumstances occurring after the date of the registered prospectus).

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

Date of notification in *Gazette*: 20 December 1990.

This notice is administered in the Securities Commission.