



## Securities Act (Commodity Strategies Pty Limited) Exemption Notice 2003

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

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### Notice

#### 1 Title

This notice is the Securities Act (Commodity Strategies Pty Limited) Exemption Notice 2003.

#### 2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

#### 3 Expiry

This notice expires on the close of 30 November 2008.

#### 4 Interpretation

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

**Act** means the Securities Act 1978

**bonus securities** means specified participatory securities that are issued to holders in accordance with the terms of the

specified participatory securities as to the allocation of distributions

**distribution** means a distribution of the distributable income (whether in the nature of capital or income) of the Trust to a holder pursuant to the trust deed of the Trust

**holder** means a person who holds specified participatory securities

**issuer** means Commodity Strategies Pty Limited

**Regulations** means the Securities Regulations 1983

**specified participatory security** means a class B unit in the Trust

**Trust** means the Portfolio Strategies Core Portfolio established under the law of a State or Territory of the Commonwealth of Australia under a trust deed signed by the issuer and dated 26 November 2003, as modified from time to time.

- (2) 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 from section 37A(1)(b) and (c) and 37A(2) of Act in respect of bonus securities**

- (1) This clause applies to bonus securities allotted by the issuer only to a holder of specified participatory securities that—
- (a) are the same kind as the bonus securities being allotted; and
  - (b) were issued on terms which require that holder to accept the allotment of bonus securities, at the discretion of the issuer, in consideration only for that holder forgoing the right to receive all or any specified part of any distribution declared by the issuer and otherwise payable to that holder.
- (2) The issuer and every person acting on its behalf are exempted from sections 37A(1)(b) and (c) and 37A(2) of the Act in respect of those bonus securities.

## **6 Conditions to clause 5**

- (1) The exemption in clause 5 from section 37A(1)(b) and (c) of the Act is subject to the conditions that—

- (a) the prospectus and investment statement relating to the specified participatory securities pursuant to which the holder subscribed for those securities contains a description of the bonus securities, and the terms and conditions of the bonus securities (other than the price of the bonus securities); and
- (b) at the time of allotment of the bonus securities, the holder receives a document that contains a statement that there is available from the issuer, on request and free of charge,—
  - (i) a copy of the current prospectus, investment statement, trust deed, deed of participation, and any amendments to those documents; and
  - (ii) a copy of the most recent annual report and financial statements (if any) of the issuer and the Trust prepared in accordance with the Financial Reporting Act 1993; and
- (c) the terms of the offer of the specified participatory securities require that,—
  - (i) at the time the price of the bonus securities is set, the issuer has no information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the bonus securities if the information were publicly available; and
  - (ii) if the issuer decides to issue bonus securities to which clause 5 applies, bonus securities are issued to all holders of specified participatory securities, other than holders who are resident outside New Zealand and who are excluded by the issuer to avoid a risk of breaching the laws of the relevant overseas country; and
- (d) the bonus securities issued to the holder are—
  - (i) issued on the terms disclosed to the holder; and
  - (ii) subject to the same rights as the bonus securities issued to all other holders of specified participatory securities.

## **7 Exemption from regulation 3(3) of Regulations in respect of specified participatory securities**

The issuer and every person acting on its behalf are exempted from regulation 3(3) of the Regulations in respect of specified participatory securities.

## **8 Conditions to clause 7**

- (1) The exemption in clause 7 is subject to the condition that the registered prospectus for the specified participatory securities contains all of the information, statements, certificates, and other matters that are applicable specified in—
  - (a) clauses 3 and 18 of Schedule 3 of the Regulations; and
  - (b) Schedule 3A of the Regulations (except clause 3), applied as if references in Schedule 3A (and in the definitions of terms used in that schedule) to—
    - (i) a unit were references to a specified participatory security; and
    - (ii) a unit trust were references to the Trust; and
    - (iii) a unit holder were references to a holder of a specified participatory security; and
    - (iv) a unit trustee were references to a statutory supervisor of the Trust; and
    - (v) a trust deed were references to a deed of participation, other than in respect of the references to the trust deed contained in clause 4 of Schedule 3A of the Regulations.
- (2) The exemption in clause 7 is subject to the condition that, if the matters required by subclause (1) to be stated or contained in the registered prospectus are not set out in that prospectus in the same order as they appear in Schedule 3A of the Regulations, that registered prospectus contains an index showing the page number of the registered prospectus on which each matter appears.
- (3) The matters required by subclause (1) to be stated or contained in the registered prospectus need not relate to any part of the stated period during which the Trust was not in existence.

Dated at Wellington this 2nd day of December 2003.

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

[L.S.]

J. Diplock,  
Chairperson.

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### **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 30 November 2008.

This notice exempts Commodity Strategies Pty Limited, subject to conditions, from the following provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of class B units in the Portfolio Strategies Core Portfolio (which is an unregistered Australian trust):

- regulation 3(3) (the effect is that, by and large, the registered prospectus relating to the offer of class B units will have to contain all of the information specified in Schedule 3A (which relates to unit trusts) rather than all of the information specified in Schedule 3 (which relates to participatory securities):
- sections 37A(1)(b) and (c) and 37A(2). These exemptions apply to bonus securities that are allotted to the existing holders of class B units by virtue of the compulsory allotment of bonus securities pursuant to a distribution. One effect is that the issuer will, subject to conditions, be able to allot bonus securities without the need to ensure that the prospectus and investment statement for the principal units in the Trust are current and are not false or misleading in a material particular. The other effect is that the issuer will be able to allot the bonus securities without the need to ensure that the amount payable on application is at least 10% of the nominal amount of the security.

2003/339

**Securities Act (Commodity Strategies Pty  
Limited) Exemption Notice 2003**

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

Date of notification in *Gazette*: 3 December 2003.

This notice is administered in the Securities Commission.

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