



## Securities Act (Public Trustee) Exemption Notice 2001

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

### Contents

1	Title	9	Exemption from clause 7(4), (5), and (6) of Third Schedule
2	Commencement		
3	Expiry		
4	Interpretation		
5	Exemption from sections 33(3) and 37(3) of Act		
6	Exemption from section 52(1) and (3) of Act		
7	Exemption from section 54 of Act		
8	Exemption from regulation 15 of Regulations		

#### Schedule 1

#### Group investment funds

#### Schedule 2

#### Matters to be specified in trust deed

### Notice

#### 1 Title

This notice is the Securities Act (Public Trustee) Exemption Notice 2001.

#### 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 19 July 2006.

#### 4 Interpretation

- (1) In this notice, unless the context otherwise requires,—  
**Act** means the Securities Act 1978

**distribution** means the direct or indirect transfer to a holder of specified participatory securities of money or property—

- (a) that is received by the fund on the fund's investments; and
- (b) that is held on trust for holders of specified participatory securities

**fund** means a group investment fund established under section 42A of the Public Trust Office Act 1957 and named in the first column of Schedule 1

**manager** means the manager named opposite the fund in the third column of Schedule 1

**Public Trustee** means the Public Trustee constituted by the Public Trust Office Act 1957

**Regulations** means the Securities Regulations 1983

**specified participatory security** means a participatory security—

- (a) that is an interest in a fund; or
- (b) that confers on the holder the right to participate in any money or property that is the subject of a distribution

**Third Schedule** means the Third Schedule of the Regulations

**trust deed** means the trust deed entered into by a trustee and a manager for the establishment of the fund

**trustee** means the trustee named opposite the fund in the second column of Schedule 1.

- (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 sections 33(3) and 37(3) of Act

- (1) Every trustee and manager and every person acting on behalf of the trustee or manager are exempted from sections 33(3) and 37(3) of the Act in the case of specified participatory securities.
- (2) The exemption is subject to the following conditions:
  - (a) that the trust deed specifies the matters set out in Schedule 2:
  - (b) that the registered prospectus for the specified participatory securities contains—

- (i) a description of the principal terms and conditions of the trust deed; and
  - (ii) a statement that the trust deed may be inspected at a specified place by any person on request and free of charge; and
  - (iii) a statement that a copy of the trust deed is available to prospective and current investors on request and free of charge:
- (c) that the registered prospectus for the specified participatory securities contains a statement by the trustee—
- (i) that the offer of the securities complies with the trust deed; and
  - (ii) whether the trustee guarantees the repayment of the securities; and
  - (iii) whether the trustee is under an obligation to ascertain whether any breach of the terms of the trust deed or of any offer of the specified participatory securities has occurred:
- (d) that any interim statement of financial position, statement of financial performance, and statement of cash flows of the fund contained, or referred to, in the registered prospectus for the specified participatory securities under clauses 21(2), 31(2), and 33(b), respectively, of the Third Schedule are audited:
- (e) that any financial statements of the fund that accompany a certificate under section 37A(1A) of the Act are audited:
- (f) that the accounting records of the fund are audited at least once a year by a qualified auditor.

## **6 Exemption from section 52(1) and (3) of Act**

- (1) Every trustee and manager and every person acting on behalf of the trustee or manager are exempted from section 52(1) and (3) of the Act in the case of the register of specified participatory securities kept by the manager under section 51(1)(c) of the Act.
- (2) The exemption from section 52(1) of the Act is subject to the condition that the register is, except when duly closed (subject to any reasonable restrictions imposed by the manager, so that not less than 2 hours in each day is allowed for inspection),

open to inspection by a holder of securities registered in the register, or the representative of the holder,—

- (a) for the part of the register that relates to the securities of that holder; and
  - (b) free of charge.
- (3) The exemption from section 52(3) of the Act is subject to the condition that, on payment by a holder of the specified participatory securities of the prescribed fee, the manager provides to that holder a copy of the part of the register that relates to the securities of that holder.

## **7 Exemption from section 54 of Act**

- (1) Every trustee and manager and every person acting on behalf of the trustee or manager are exempted from section 54 of the Act in the case of specified participatory securities.
- (2) The exemption is subject to the condition that the manager sends, or causes to be sent, to each holder of specified participatory securities a written statement that properly evidences the nature and ownership of the specified participatory securities of the holder—
  - (a) within 14 days of allotment if the holder is a new investor in the fund; and
  - (b) at any time upon request; and
  - (c) at least once every 6 months.

## **8 Exemption from regulation 15 of Regulations**

- (1) Every trustee and manager and every person acting on behalf of the trustee or manager are exempted from regulation 15 of the Regulations in the case of specified participatory securities.
- (2) The exemption is subject to the following conditions:
  - (a) that the principal assumptions and method of calculation in accordance with which the projected rate of return that may be earned by holding an interest in the fund is calculated are set out in the registered prospectus;
  - (b) that any advertisement that advertises a rate of return for the specified participatory securities contains a statement that the method of calculating the advertised rate of return is contained in the registered prospectus.

## 9 Exemption from clause 7(4), (5), and (6) of Third Schedule

- (1) Every trustee and manager and every person acting on behalf of the trustee or manager are exempted from clause 7(4), (5), and (6) of the Third Schedule in the case of specified participatory securities.
- (2) The exemption from clause 7(4) of the Third Schedule is subject to the following conditions:
  - (a) that the registered prospectus for the specified participatory securities contains a statement of the proposed distribution of any gross earnings of the fund between any promoters, the manager, and holders of specified participatory securities:
  - (b) that information regarding the causes of market interest rate changes is included in the registered prospectus.

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## Schedule 1 Group investment funds

cl 4

<b>Fund</b>	<b>Trustee</b>	<b>Manager</b>
Group Investment Fund No 75, known as the Thoroughbred Cash Fund	The Public Trustee	The National Bank of New Zealand Limited

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cl 5(2)(a)

## **Schedule 2**

### **Matters to be specified in trust deed**

#### **1 Investment of fund**

The investment or classes of investment in which the assets of the fund may be invested.

#### **2 Capital of fund**

- (1) Whether any limits as to number or amount apply to all specified participatory securities or to any class of specified participatory securities that have been or may be issued for the fund and, if so, the nature of those limits.
- (2) The liability, if any, of the holders of the specified participatory securities to contribute to the fund before its winding up.
- (3) If there is, or is to be, a minimum amount of specified participatory securities that must be allotted before the commencement of the fund, a statement of that minimum amount.

#### **3 Redemption and transfer of specified participatory securities**

The terms that relate to the redemption, transfer, and transmission of the specified participatory securities.

#### **4 Winding up of fund**

- (1) The circumstances in which the fund must or may be wound up, and the procedure for winding up.
- (2) The rights and liabilities of holders of specified participatory securities on, and in the course of, the winding up of the fund.

#### **5 Meetings**

The frequency of, the procedure for convening and holding, the business to be conducted at, and the voting rights at, meetings of holders of specified participatory securities.

#### **6 Trustee**

- (1) The terms that relate to the appointment, remuneration, and, if any, removal from office of the trustee.
- (2) The powers of the trustee, including any borrowing powers and any powers to delegate the management of the fund.

- (3) The duties and liabilities of the trustee, including the duty to hold the assets of the fund according to the terms of the issue of the specified participatory securities.

## **7 Manager**

- (1) The terms that relate to the appointment, remuneration, and, if any, removal from office of the manager.
- (2) The powers of the manager, including any borrowing powers and any other powers in connection with the fund.
- (3) The duties and liabilities of the manager.

## **8 Profits involved**

The terms that relate to the use or distribution of any profits of the fund.

Dated at Wellington this 24th day of July 2001.

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

[L.S.]

M. R. H. Webb,  
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 19 July 2006.

This notice applies to participatory securities in the form of interests in a group investment fund for which the Public Trustee is the trustee.

The notice exempts both the trustee and the manager of the fund, subject to conditions, from compliance with the following provisions of the Securities Act 1978:

- section 33(3), which relates to the requirement that an issuer of participatory securities appoint a statutory supervisor, and enter into a deed of participation with that person:
- section 37(3), which relates to the requirement that a statutory supervisor receive a written statement from the subscriber that authorises the subscription for a particular participatory security:
- section 52(1) and (3), which relates to inspection and copies of the register of securities kept by an issuer:
- section 54, which requires an issuer to send to a security holder either the security, or a certificate of the security, within 1 month of allotment or transfer of the security.

The trustee and the manager of the fund are also exempted, subject to conditions, from compliance with the following provisions of the Securities Regulations 1983:

- regulation 15, which relates to requirements as to when prospective financial information may be included in advertisements:
- clause 7(4), (5), and (6) of the Third Schedule, which relates to a feasibility study and prospective financial information that must be included in a registered prospectus for participatory securities.

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

Date of notification in *Gazette*: 26 July 2001.

This notice is administered in the Securities Commission.

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