



Securities Act (Tower Trust) Exemption Notice 2001

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

Contents

1	Title	8	Exemption from clauses 7(4), 7(5), and 7(6) of Third Schedule
2	Commencement		
3	Expiry		
4	Interpretation		
5	Exemption from sections 33(3) and 37(3) of Act		
6	Exemption from sections 52(1) and 52(3) of Act		
7	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 (Tower Trust) 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 11 March 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 in respect of investments held by the fund; and
- (b) that is held on trust for holders of specified participatory securities

fund means a group investment fund established under section 29 of the Trustee Companies Act 1967 and named in the first column of Schedule 1 of this notice

manager, in relation to a fund, means the manager named opposite the fund in the third column of Schedule 1

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 upon the holder of the participatory security 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, in relation to a fund, means the trust deed entered into by a trustee and a manager relating to the establishment of the fund

trustee, in relation to a fund, 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 respect of specified participatory securities.
- (2) The exemption is subject to the following conditions:
 - (a) that the trust deed contains provisions specifying the matters set out in Schedule 2:
 - (b) that the registered prospectus in respect of 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 in respect of 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 any 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 in respect of 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 accompanying 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 sections 52(1) and 52(3) of Act

- (1) Every trustee and manager, and every person acting on behalf of the trustee or manager, are exempted from sections 52(1) and 52(3) of the Act in respect 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 of specified participatory securities kept under section 51(1)(c) of the Act by the manager is, except when duly closed (but 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) in respect of 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, upon 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 kept under section 51(1)(c) of the Act that relates to the securities of that holder.

7 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 respect of the 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 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.

8 Exemption from clauses 7(4), 7(5), and 7(6) of Third Schedule

- (1) Every trustee and manager, and every person acting on behalf of the trustee or manager, are exempted from clauses 7(4), 7(5), and 7(6) of the Third Schedule in respect 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 relating to 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 causes of market interest rate changes is included in the registered prospectus.

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Schedule 1 Group investment funds

Group Investment Fund No 150, known as the First Mortgage Trust Group Investment Fund	The Trustees Executors and Agency Company of New Zealand Limited, trading as Tower Trust	First Mortgage Managers Limited
Group Investment Fund No 151, known as the New Zealand Mortgage Income Trust Group Investment Fund	The Trustees Executors and Agency Company of New Zealand Limited, trading as Tower Trust	Fund Managers Otago Limited
Group Investment Fund No 153, known as the Canterbury Mortgage Trust Group Investment Fund	The Trustees Executors and Agency Company of New Zealand Limited, trading as Tower Trust	Fund Managers Canterbury Limited

Schedule 2

Matters to be specified in trust deed

cl 5(2)(a)

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 in respect of 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) Where 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 relating 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, 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 relating 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 relating 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 respect of the fund.
- (3) The duties and liabilities of the manager.

8 Profits involved

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

Dated at Wellington this 8th day of March 2001.

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 11 March 2006.

This notice applies to participatory securities in the form of interests in 3 group investment funds for which The Trustees Executors and Agency Company of New Zealand Limited, trading as Tower Trust, is the trustee.

The effect of the notice is that both the trustee and the manager in respect of each of the funds are exempted, subject to conditions,

from compliance with the following provisions of the Securities Act 1978:

- sections 33(3) and 37(3), which relate to the requirement that an issuer of participatory securities appoint a statutory supervisor, and enter into a deed of participation with that person
- sections 52(1) and 52(3), which relate to inspection and copies of the register of securities kept by an issuer.

The trustee and the manager in respect of each of the funds 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
 - clauses 7(4), 7(5), and 7(6) of the Third Schedule, which relate to 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*: 9 March 2001.

This notice is administered in the Securities Commission.
