



## SECURITIES ACT (CREDIT UNIONS) EXEMPTION NOTICE 1997

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

### NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (Credit Unions) Exemption Notice 1997.

(2) This notice comes into force on the 28th day after the date of its notification in the *Gazette*.

(3) This notice expires on the close of 31 March 1998.

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

“The Act” means the Securities Act 1978:

“Credit union” means a credit union within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982:

“The Regulations” means the Securities Regulations 1983:

“Second Schedule” means the Second Schedule of the Regulations.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

**3. Credit unions exempt from certain provisions of the Securities Act 1978 and regulation 10 of the Securities Regulations 1983**—

(1) Every credit union and every person acting on its behalf are exempted from compliance with the provisions of section 33 (2) of the Act in respect of any offer of debt securities of which the credit union is the issuer.

(2) The exemption in subclause (1) is subject to the conditions that—

(a) The credit union ensures that its accounting records are audited at least once every 6 months by an auditor who is a member of the Institute of Chartered Accountants of New Zealand and who holds a certificate of public practice; and

(b) Any interim balance sheet set out in a registered prospectus pursuant to clause 16 (2) of the Second Schedule, any profit and loss account contained in the registered prospectus pursuant to clause 27 (2) of that Schedule, and any statement of cash flows contained in the registered prospectus pursuant to clause 29 (2) of that Schedule are audited; and

- (c) The credit union has authorised its auditor to inform the Registrar of Friendly Societies and Credit Unions if, in the opinion of the auditor, there is good reason to suspect that the credit union is in breach of the Act or the Regulations or the terms of the offer of debt securities or that the assets of the credit union are not sufficient or likely to be sufficient to discharge the amounts of any debt securities as they become due; and
  - (d) The auditor of the credit union has undertaken to inform the Registrar of Friendly Societies and Credit Unions if, in the auditor's opinion, there is good reason to suspect any matter described in paragraph (c).
- (3) Every credit union and every person acting on its behalf are 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 of which the credit union is the issuer.
- (4) The exemption in subclause (3) is subject to the conditions that—
- (a) The credit union provides, free of charge at the request of any person made at any time, a copy of the most recent registered prospectus that relates to the debt securities; and
  - (b) Every authorised advertisement distributed by or on behalf of the credit union contains a statement to the effect that copies of the registered prospectus referred to in paragraph (a) are available, free of charge, upon request; and
  - (c) At the date of allotment, the registered prospectus is not known by the credit union, or any director of the credit union, 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).
- (5) The exemption in subclause (3) is subject to the further condition that, if the auditor's report on the most recent financial statements of a credit union is qualified or refers to a fundamental uncertainty (within the meaning of the most recent auditing standard issued by the Institute of Chartered Accountants of New Zealand), no allotment of any securities is made to a subscriber unless the subscriber has, before subscribing for the securities, been given or sent a written statement that—
- (a) The financial statements are subject to an audit report that is qualified or that refers to a fundamental uncertainty; and
  - (b) Explains the qualification or the fundamental uncertainty; and
  - (c) Refers to the registered prospectus that relates to the securities, states the date of its registration, and states the place where the registered prospectus may be obtained, free of charge, on request.
- (6) Every credit union and every person acting on its behalf are exempted from compliance with the provisions of section 37A (1) (f) of the Act in respect of any offer of debt securities of which the credit union is the issuer.

**4. Credit unions exempt from sections 51, 52, and 53 (5) of the Securities Act 1978**—Every credit union is exempted from compliance with the provisions of sections 51, 52, and 53 (5) of the Act in respect of any debt securities issued by the credit union.

**5. Credit unions exempt from clauses 1 (3) and 11 of Second Schedule of the Securities Regulations 1983**—Every credit union and every person acting on its behalf are exempted from compliance with the provisions of clauses 1 (3) and 11 of the Second Schedule in respect of any offer of debt securities of which the credit union is the issuer.

**6. Credit unions exempt from section 54 of the Securities Act 1978**—(1) Every credit union is exempted from compliance with the provisions of section 54 of the Act in respect of any debt securities issued by the credit union.

(2) The exemption in subclause (1) is subject to the condition that the credit union 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 amount, nature, ownership, and terms and conditions of all debt securities issued by the credit union, whether before or after the date on which this notice comes into force, and held by the security holder.

**7. Credit unions exempt from clause 36 (1) of Second Schedule of the Securities Regulations 1983**—(1) Every credit union and every person acting on its behalf are exempted from compliance with the provisions of clause 36 (1) of the Second Schedule in respect of any offer of debt securities of which the credit union is the issuer.

(2) The exemption in subclause (1) is subject to the conditions that—

(a) Every registered prospectus relating to such debt securities distributed by or on behalf of that credit union contains a copy of a report by an auditor who is member of the Institute of Chartered Accountants of New Zealand and who holds a certificate of public practice signed by that auditor (either in the auditor's own name or in that of the auditor's firm), stating—

(i) The work done by the auditor; and

(ii) The scope and limitations of the audit; and

(iii) The existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the credit union; and

(iv) Whether the auditor has obtained all information and explanations that he or she has required; and

(v) Whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the credit union; and

(vi) Whether or not, in the auditor's opinion, the financial statements that are required by clauses 16 to 31 of the Second Schedule and that are required to be audited—

(A) Comply with the Regulations; and

(B) Subject to the Regulations, comply with generally accepted accounting practice; and

(C) Give a true and fair view of the state of affairs of the credit union as at the date of the financial statements and of the results and cash flows of the credit union for the period to which they relate, taking into account information or explanations of the kind referred to in section 14 (2) of the Financial Reporting Act 1993 (if any)—

and, if they do not, the respects in which they do not; and

(vii) Whether the amounts stated pursuant to clauses 7 (2), 7 (3), 8 (2), 8 (3), and 12 of the Second Schedule have been taken from audited financial statements, and whether or not the amounts have been correctly taken; and

(b) Every prospectus delivered to the Registrar for registration under the Act by or on behalf of a credit union has endorsed on it, or attached to it, or is accompanied by—

(i) The signed audit report required to be contained pursuant to paragraph (a); and

(ii) A statement, dated not earlier than 7 days before the specified date and signed by the auditor (either in the auditor's own name or in that of the auditor's firm), that the auditor consents to the report appearing in the registered prospectus in the form in which it appears.

**8. Revocations**—The notices specified in the Schedule are revoked.

SCHEDULE  
NOTICES REVOKED

Notice	Statutory Regulations Serial Number
The Securities Act (Credit Unions) Exemption Notice 1995	S.R. 1995/86
The Securities Act (Credit Unions) Exemption Notice 1995, Amendment No. 1	S.R. 1996/30
The Securities Act (Credit Unions) Exemption Notice 1995, Amendment No. 2	S.R. 1996/139

Dated at Wellington this 1st day of May 1997.

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, which comes into force on the 28th day after the date of its notification in the *Gazette*, replaces the Securities Act (Credit Unions) Exemption Notice 1995. The notice exempts credit unions issuing debt securities from sections 33 (2), 37A (1) (a) to (d), 38 (a) and (b), 51, 52, 53 (5), and 54 of the Securities Act 1978 and regulations 10 and 36 (1) of the Securities Regulations 1988. Section 33 (2) prohibits offering debt securities to the public for subscription unless the issuer has appointed a trustee for the securities and entered into a trust deed. Sections 37A (1) (a) to (d) and 38 (a) and (b), in effect, require a subscriber to receive a registered prospectus before subscribing for securities. Section 51 requires issuers to keep a securities register. Section 52 gives rights to inspect the register. Section 53 (5) imposes an annual audit requirement. Section 54 requires issuers to issue certificates for securities. The exemptions are the same as those in the Securities Act (Credit Unions) Exemption Notice 1995. However, the principal difference between the 2 notices is the addition of a further condition of the exemption from sections 37A (1) (a) to (d) and 38 (a) and (b) of the Act and regulation 10 of the Regulations.

That further condition is that if the audit report on the financial statements of the credit union is qualified or refers to a fundamental uncertainty, the credit union is prohibited from allotting securities unless a written statement is given to the subscriber that—

- (a) States that the financial statements are subject to an audit report that is qualified or that refers to a fundamental uncertainty; and
- (b) Explains the qualification or the fundamental uncertainty; and
- (c) Refers to the registered prospectus that relates to the securities, states the date of its registration, and states the place where the registered prospectus may be obtained, free of charge, on request.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 2 May 1997.  
This notice is administered in the Securities Commission.