



**THE SECURITIES ACT (AUSTRALIAN UNIT TRUSTS)
EXEMPTION NOTICE 1995**

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 (Australian Unit Trusts) Exemption Notice 1995.

(2) This notice shall come into force on the 1st day of August 1995.

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

“The Act” means the Securities Act 1978:

“Australian issuer” means a person named in the First Schedule to this notice:

“Registered” includes lodged or filed or delivered for registration and “registration” has a corresponding meaning:

“The Regulations” means the Securities Regulations 1983:

“Specified participatory securities” means participatory securities in a unit trust established pursuant to the law of a State or Territory of the Commonwealth of Australia.

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

3. Meaning of “Australian prospectus”—For the purposes of this notice, the term “Australian prospectus” in relation to an Australian issuer, means a document—

(a) That contains an offer of specified participatory securities by that Australian issuer; and

(b) That is identical to a document registered under the law of a State or Territory of the Commonwealth of Australia; and

(c) By means of which it is lawful under the law of that State or Territory to make an offer of the specified participatory securities; and

(d) A copy of which has been deposited with the Registrar of Companies at Wellington together with a copy of—

(i) If not previously deposited with the Registrar, the trust deed of the Australian issuer relating to the specified participatory securities and every amendment thereto:

(ii) If not previously deposited with the Registrar, a letter of acceptance of the trust deed and every amendment thereto relating to the specified participatory securities issued by the relevant regulatory authority in accordance with the law of the State or Territory of the Commonwealth of Australia in accordance with which the document has been registered:

(iii) If not previously deposited with the Registrar, a certificate from the trustee named in the trust deed certifying that the trust deed relating to the specified participatory securities is in full force and effect:

(iv) Every material contract specified or referred to in the document:

(v) Any certificate or other document evidencing registration of the document:

(vi) If not previously deposited with the Registrar, the current dealer's licence of the Australian issuer.

4. Certain Australian issuers exempt from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983—(1) Subject to subclauses (2) and (6) of this clause, every Australian issuer, and every person acting on its behalf, is exempted from compliance with the provisions of sections 33 and 38A of the Act in respect of any offer of specified participatory securities of which it is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that—

(a) The offer is made in, or accompanied by, an Australian prospectus; or

(b) The offer is made in an advertisement that—

(i) Refers to an Australian prospectus that relates to all the securities referred to in the advertisement and states the date and place of registration thereof; and

(ii) States that allotments of the securities shall be made in the manner specified in the Australian prospectus and in the manner prescribed under the law of the State or Territory of the Commonwealth of Australia in accordance with which the Australian prospectus is registered; and

(iii) Specifies the place or places at which an Australian prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent an Australian prospectus, or both; and

(iv) Complies with the provisions of the Act and the Regulations relating to advertisements, other than provisions compliance with which is exempted pursuant to subclause (1) of this clause and, for the purposes of this subparagraph, references in those regulations to the expression "registered prospectus" shall be construed as references to an Australian prospectus.

(3) Subject to subclause (6) of this clause, every Australian issuer, and every person acting on its behalf, is exempted from compliance with the provisions of sections 37, 37A, and 51 to 54 of the Act in respect of any

offer of specified participatory securities of which it is the issuer made in an Australian prospectus.

(4) Subject to subclause (6) of this clause, every Australian issuer, and every person acting on its behalf, is exempted from compliance with the provisions of regulations 9 to 19, 21, and 22 of the Regulations in respect of the distribution of an Australian prospectus.

(5) Nothing in subclause (4) of this clause applies in respect of an advertisement referred to in subclause (2) (b) of this clause.

(6) The exemptions granted by subclauses (1), (3), and (4) of this clause are subject to the following terms and conditions:

(a) That the Australian issuer not later than the close of the 31st day of March in each year furnishes to the Commission a written report in respect of the preceding calendar year that—

(i) States whether the Australian issuer continued to offer specified participatory securities to the public in New Zealand pursuant to an Australian prospectus; and

(ii) Specifies each unit trust in respect of which the Australian issuer continued to offer specified participatory securities; and

(iii) Specifies in respect of each unit trust the total amount of money raised in New Zealand by the Australian issuer by the offer of specified participatory securities; and

(iv) States in respect of each unit trust whether the Australian issuer wishes to continue to offer specified participatory securities to the public in New Zealand subject to the exemptions granted by this notice; and

(b) That every Australian prospectus that contains or refers to an offer of specified participatory securities contains, or is accompanied by a document that contains, a prominent statement that—

(i) Copies of documents material to the issue of specified participatory securities have been deposited with, and are available for inspection at the offices of, the Registrar of Companies at Wellington; and

(ii) The tax laws of Australia and New Zealand differ and that persons considering subscribing for specified participatory securities are advised to obtain professional taxation advice before doing so.

5. Notices revoked—The notices specified in the Second Schedule to this notice are hereby revoked.

SCHEDULES

FIRST SCHEDULE

C1.2

Advance Asset Management Limited
Advisor Asset Management Limited
Alliance Capital Management Australia Limited
Armstrong Jones Fund Management Limited
Bain & Company Administration Services Limited
BT Financial Services Limited
BZW Investment Management Australia Limited
BZW-Mirvac Funds Limited
Challenger Asset Management Limited
Colonial Mutual Funds Limited
Colonial Mutual Funds Management Limited
CS First Boston Australia Investment Management Limited
EquitiLink Australia Limited
First State Fund Managers Limited
Global Funds Management (Vic) Limited
Goodman Hardie Management Australia Limited
Growth Equities Mutual Limited
GRW Property Limited
G.T. Management (Australia) Limited
HSBC Investment Funds Australia Limited
Jardine Fleming Australia Management Limited
J.B. Were Capital Markets Limited
Macquarie Investment Management Limited
Mercantile Mutual Funds Management Limited
MLC Investments Limited
National Australia Fund Management Limited
National Mutual Assets Management Limited
Ord Minnett Management Limited
Paladin Australia Limited
Perpetual Asset Management Limited
Perpetual Management Limited
Potter Warburg Asset Management Limited
Potter Warburg Cash Management Limited
Rothschild Australia Asset Management Limited
Thornton Management (Australia) Limited
Tyndall Investment Management (Australia) Limited
Were Securities Limited

SECOND SCHEDULE
NOTICES REVOKED

Notice	Statutory Regulations Serial Number
The Securities Act (Australian Unit Trusts) Exemption Notice 1993	S.R. 1993/26
The Securities Act (Australian Unit Trusts) Exemption Notice 1993, Amendment No. 2	S.R. 1993/154
The Securities Act (Australian Unit Trusts) Exemption Notice 1993, Amendment No. 14	S.R. 1995/81
The Securities Act (Australian Unit Trusts) Exemption Notice 1993, Amendment No. 15	S.R. 1995/85

Dated at Wellington this 17th day of May 1995.

The Common Seal of the Securities Commission was hereunto 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 1 August 1995, replaces the Securities Act (Australian Unit Trusts) Exemption Notice 1993.

The Securities Act (Australian Unit Trusts) Exemption Notice 1993 exempts Australian issuers from the requirement that offers of interests in Australian unit trusts must be made in a registered prospectus or an authorised advertisement. The exemption is subject to the condition that such offers are made in an Australian prospectus or an advertisement that complies with clause 4 (2) (b) of the notice.

That notice requires a copy of the Australian prospectus to be deposited with the Registrar of Companies at Wellington together with a number of documents including—

- (a) The relevant trust deed;
- (b) A letter of acceptance of the trust deed from the relevant regulatory authority;
- (c) A certificate from the trustee that the trust deed is in full force and effect;
- (d) The current dealer's licence of the Australian issuer.

Under this notice, the documents referred to in paragraphs (a), (b), (c), and (d) will no longer be required to be deposited with the Registrar if they have previously been deposited with the Registrar.

Clause 4 (3) of the Securities Act (Australian Unit Trusts) Exemption Notice 1993 also exempts Australian issuers from regulations 12, 15, and 17 of the Securities Regulations 1983 in respect of offers of interests in Australian unit trusts made in an Australian prospectus. Clause 4 (3) has been interpreted as also applying to advertisements that contain offers of such securities and that comply with clause 4 (2) (b) and exempting those advertisements from compliance with regulations 12, 15, and 17.

This notice makes it clear that such advertisements must comply with the Securities Regulations 1983 including those regulations.

This notice exempts Australian issuers from regulations 9 to 19, 21, and 22 in respect of offers of interests in Australian unit trusts made in an Australian prospectus. This exemption is not limited to regulations 12, 15, and 17 as was previously the case.

In all other respects this notice is the same as the Securities Act (Australian Unit Trusts) Exemption Notice 1993.

The notice exempts the persons named in the First Schedule and persons acting on their behalf—

- (a) From the requirement that offers of interests in Australian unit trusts must be made in a registered prospectus or an authorised advertisement if the offers are made in an Australian prospectus (as that term is defined) or an advertisement that complies with clause 4 (2) (b) of the notice; and
- (b) From compliance with sections 37, 37A, and 51 to 54 of the Securities Act 1978 in the case of offers made in an Australian prospectus; and
- (c) From compliance with regulations 9 to 19, 21, and 22 of the Securities Regulations 1983 in respect of the distribution of an Australian prospectus.

The exemptions are subject to 2 conditions.

The first is that an issuer must provide a written report to the Securities Commission by 31 March each year relating to the preceding calendar year that—

- (a) States whether the issuer continued to offer interests in a unit trust in New Zealand; and
- (b) Specifies the unit trust in which such interests were offered; and
- (c) Specifies the total amount raised in New Zealand in respect of each unit trust; and
- (d) States whether the issuer wishes to continue offering interests in a unit trust in New Zealand subject to the exemptions contained in the notice.

The second is that every Australian prospectus must state, or be accompanied by a document that states, that—

- (a) Copies of documents material to the offer of interests in the unit trust are available for inspection at the offices of the Registrar of Companies at Wellington; and
- (b) The tax laws of Australia and New Zealand are different and that persons considering subscribing for interests in the unit trust are advised to obtain professional taxation advice before doing so.

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

Date of notification in *Gazette*: 18 May 1995.

This notice is administered in the Securities Commission.