



## SECURITIES ACT (AUSTRALIAN UNIT TRUSTS) EXEMPTION NOTICE 1997

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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 (Australian Unit Trusts) Exemption Notice 1997.

(2) This notice comes into force on 1 October 1997.

(3) This notice expires on the close of 30 September 2002.

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

“Act” means the Securities Act 1978:

“Australian participatory securities” means participatory securities in an Australian unit trust:

“Australian prospectus” means a document—

(a) That contains an offer of Australian participatory securities by a manager; and

(b) That is identical to a document that is lodged or registered under the law of a specified State and that is signed by such persons (if any) as are required by that law to sign that document; and

(c) By means of which it is lawful under the law of that specified State to make an offer of those Australian participatory securities to the public in that specified State:

“Australian unit trust” means a unit trust established under the law of a specified State:

“Corporations Law” means the Corporations Law of a specified State:

“Lodged” means lodged under the law of a specified State; and  
“lodgement” has a corresponding meaning:

“Manager” means a person who—

(a) Acts in the promotion or management of an Australian unit trust; and

(b) Holds a licence granted by the Australian Securities Commission under section 784 of the Corporations Law:

“Registered” means registered under the law of a specified State; and  
“registration” has a corresponding meaning:

“Regulations” means the Securities Regulations 1983:

“Specified State” means 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 or the Regulations, has the meaning given to it by the Act or the Regulations.

**3. Exemption**—(1) Every manager, and every person acting on its behalf, are exempted from—

(a) Sections 33 (3), 37, and 37A (2) of the Act; and

(b) Section 38A of the Act and regulations 11 to 18, 21, and 22 of the Regulations; and

(c) Sections 51 to 54 of the Act—

in respect of any Australian participatory securities of which the manager is the issuer.

(2) Subclause (1) (b) applies in respect of an Australian prospectus only, and not in respect of any investment statement or other advertisement.

(3) Every manager, and every person acting on its behalf, are exempted from section 38 (a) of the Act to the extent that that provision requires an Australian prospectus to refer to an investment statement.

**4. Australian prospectus**—The exemption granted by clause 3 (1) (a) and (b) is subject to the conditions that—

(a) There is an Australian prospectus relating to the Australian participatory securities at the time that offers of the Australian participatory securities are made or are open for acceptance in New Zealand; and

(b) It is a term of each offer of the Australian participatory securities made in New Zealand that the manager will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the Australian participatory securities concerned, without fee, send, or cause to be sent, to that offeree—

(i) A copy of the Australian prospectus; and

(ii) Copies of any documents that, under the law of the specified State concerned, must accompany any copy of the Australian prospectus sent to any person to whom an offer of the Australian participatory securities is made in that specified State.

**5. Documents to be deposited in Wellington**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that a copy of each of the following documents has been deposited with the Registrar of Companies at Wellington:

(a) The Australian prospectus relating to the Australian participatory securities;

(b) The trust deed for the Australian unit trust, and every amendment thereto;

(c) A letter of acceptance of the trust deed and every amendment thereto relating to the Australian participatory securities issued by the relevant regulatory authority in accordance with the law of the specified State concerned;

(d) A certificate from the trustee of the Australian unit trust certifying that the trust deed is in full force and effect:

- (e) Any certificate or other document evidencing lodgement or registration of the Australian prospectus;
- (f) A copy of any material contract that has been lodged or registered with the Australian prospectus; or
  - (i) If the contract is not in writing, a copy of any memorandum that has been so lodged or registered and that contains particulars of the contract; or
  - (ii) If an exemption or declaration has been granted by the Australian Securities Commission under section 1084 of the Corporations Law, a copy of any memorandum that has been so lodged or registered and that contains particulars of the material contract prepared pursuant to that exemption or declaration;
- (g) The current licence of the manager granted under section 784 of the Corporations Law;
- (h) The authorisation to act as the trustee of the Australian unit trust granted under section 1067 of the Corporations Law.

**6. Investment statements**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that any investment statement that relates to the Australian participatory securities concerned—

- (a) Includes, to the extent appropriate, statements to the following effect:
  - (i) That allotments of the Australian participatory securities will be made in the manner specified in the Australian prospectus and in the manner prescribed by the law of the specified State concerned; and
  - (ii) The names and addresses of the manager, the trustee, and the administration manager (if any) of the Australian unit trust; and
  - (iii) That the manager, the trustee, and the administration manager (if any) may not be subject in all respects to New Zealand law; and
  - (iv) That the contract in respect of the Australian participatory securities may not be enforceable in New Zealand courts; and
  - (v) That investors should satisfy themselves as to the tax implications of investing in the Australian participatory securities; and
  - (vi) That investing in Australian participatory securities may carry with it a currency exchange risk; and
  - (vii) That the financial reporting requirements applying in New Zealand and those applying in respect of the Australian unit trust may be different and the financial statements of the Australian unit trust may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
  - (viii) That, although a copy of the Australian prospectus and other documents have been deposited with the Registrar of Companies at Wellington, the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and

- (b) Complies with the provisions of the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to “registered prospectus” were references to the Australian prospectus.

**7. Offers to be made in Australia at same time**—The exemption granted by clause 3 (1) (a) and (b) is subject to the further condition that, at the same time as offers of the Australian participatory securities are made or are open for acceptance in New Zealand, offers of the Australian participatory securities are also made or are open for acceptance in the specified State concerned in accordance with the law of that specified State.

**8. Annual report to Commission**—The exemption granted by clause 3 (1) (a) and (b) in respect of any Australian participatory securities offered after 31 March in any calendar year is subject to the further condition that, where the manager has offered Australian participatory securities to the public in New Zealand during the preceding calendar year, the manager has furnished to the Commission a written report in respect of that preceding calendar year that—

- (a) Specifies each Australian unit trust in respect of which the manager offered Australian participatory securities during that preceding calendar year; and
- (b) Specifies in respect of each such Australian unit trust—
- (i) The total amount of money raised in New Zealand in that preceding calendar year by the manager by the offer of Australian participatory securities; and
  - (ii) The total amount of New Zealand raised funds under management by the manager as at the last day of that preceding calendar year; and
- (c) States in respect of each such Australian unit trust whether the manager intends to continue to offer Australian participatory securities to the public in New Zealand subject to the exemptions granted by this notice.

Dated at Wellington this 29th day of September 1997.

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

[L.S.]

M. R. H. WEBB,  
Member.

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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 October 1997 and expires on 30 September 2002, exempts managers of unit trusts established under the law of any State or Territory of the Commonwealth of Australia ("Australian unit trusts") from the following provisions of the Securities Act 1978 and the Securities Regulations 1983:

- (a) Section 33 (3), which requires the appointment of a statutory supervisor, and a deed of participation, in respect of participatory securities;
- (b) Section 37 and 37A (2), which prohibit the allotment of securities offered to the public unless there is a registered prospectus relating to the securities and prescribe the minimum amount payable on application;
- (c) Sections 51 to 54, which relate to the keeping of registers and accounting records, and the sending of certificates to security holders;
- (d) Sections 38 (a) and 38A and regulations 11 to 18, 21, and 22, which contain requirements as to the content of advertisements (including investment statements) and registered prospectuses.

The exemptions are subject to the following conditions:

- (a) A copy of the prospectus required by the law of the State or Territory in which the Australian unit trust is established (the "Australian prospectus") must be deposited with the Registrar of Companies at Wellington, together with copies of various other documents;
- (b) Any investment statement that relates to the Australian unit trust must contain a number of specified statements;
- (c) The manager must undertake to send a copy of the Australian prospectus and other documents to any offeree who so requests within 5 working days of receiving the request;
- (d) The manager must each year provide to the Commission a written report in respect of various matters;
- (e) Offers of the participatory securities in the Australian unit trust must be made in the State or Territory concerned at the same time as offers are made in New Zealand.

The notice is drafted on the basis that, where an exemption is given from a specified provision, it is not necessary to refer to other provisions that will not apply as a consequence of that exemption. For example, the exemption from section 37 of the Securities Act 1978 (the requirement to register a prospectus) means that sections 34, 37A (1) (c) and (d), and 39 to 44 of that Act will not apply.

This notice replaces the Securities Act (Australian Unit Trusts) Exemption Notice 1995 and the Securities Act (Australian Unit Trusts) Exemption Notice 1996. This notice is required as a result of the coming into force, on 1 October 1997, of new disclosure and other requirements under the Securities Act 1978.

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

Date of notification in *Gazette*: 30 September 1997.

This notice is administered in the Securities Commission.