



**SECURITIES ACT (RETIREMENT VILLAGES) EXEMPTION
NOTICE 1997**

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 (Retirement Villages) Exemption Notice 1997.

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

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

“The Act” means the Securities Act 1978:

“Address” means,—

(a) In the case of an individual, both—

(i) An address (not being a Post Office box address, document exchange box number, facsimile number, or other similar postal address) in New Zealand at which the person can be contacted; and

(ii) The city, town, or district (whether in New Zealand or elsewhere) in which the principal residence of the individual is situated:

(b) In any other case, both—

(i) An address (not being a Post Office box address, document exchange box number, facsimile number, or other similar postal address) in New Zealand at which the person can be contacted; and

(ii) The address, if that address is different from the address referred to in subparagraph (i), of the person’s principal place of business in New Zealand (if any) or, if the person does not have a place of business in New Zealand, the address of the person’s principal place of business outside New Zealand:

“Completed”, in relation to a retirement village to which the scheme relates, means that—

(a) The land comprising the retirement village has been acquired; and

(b) The buildings and other improvements comprising the retirement village have been acquired or constructed, as the case may be,—

and are ready for use or occupation:

“Development debt” means any material liability incurred in respect of a retirement village to which the scheme relates, being a secured or unsecured liability that would, in accordance with generally accepted accounting practice, be classified as a liability, but does not include—

(a) Money payable to a security holder under any occupancy agreement in respect of the retirement village to which the scheme relates; or

(b) Deferred taxes; or

(c) A contingent liability; or

(d) A liability incurred in the ordinary course of the business of the ongoing operation of the retirement village to which the scheme relates; or

(e) A liability which, in the opinion of the specified issuer and its qualified auditor, is not material:

“FRS-10” means the financial reporting standard known as Financial Reporting Standard No. 10, approved under the Financial Reporting Act 1993:

“FRS-29” means the financial reporting standard known as Financial Reporting Standard No. 29, approved under the Financial Reporting Act 1993:

“Liable entity” means a person who is liable to a holder of a specified security in respect of any money due to the holder of the specified security on the surrender, resale, or other termination of the right to accommodation and services to which the specified security relates:

“Manager” has the same meaning as in section 2 of the Securities Act 1978:

“Registered bank” has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989:

“The Regulations” means the Securities Regulations 1983:

“Retirement village” means a complex that provides, or is intended to provide, residential accommodation and services for persons in their retirement:

“Scheme” means the scheme to which a specified security relates:

“Services” includes—

(a) Management and administrative services; and

(b) Gardening, repair, and maintenance services; and

(c) Hospital, nursing, or medical services, including accommodation; and

(d) Emergency and security services; and

(e) Shops and other services for the provision of goods to a holder of a specified security; and

(f) Residential accommodation; and

(g) Laundry services; and

(h) The provision of meals; and

(i) Services or facilities for the recreation or entertainment of a holder of a specified security; and

(j) Other services or facilities for the care or benefit of a holder of a specified security:

“Specified issuer” means a person that is named in Schedule 1:

“Specified security”, in relation to a scheme, means—

(a) A debt security that secures the security holder’s right to repayment of any sum—

(i) That is paid for the security holder’s right to accommodation and services in respect of the retirement village to which the debt security relates; and

(ii) That is repayable to the security holder as a result of the termination of that right to accommodation and services; or

(b) A participatory security that confers on the security holder the right to accommodation and services in respect of a retirement village to which the participatory security relates:

“Trustee” means a trustee corporation or a person approved by the Commission to act as a trustee under section 48 of the Act.

(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. Certain issuers exempted from section 33 (2) of the Securities Act 1978 and regulation 3 (2) of the Securities Regulations 1983—

(1) Every specified issuer and every person acting on its behalf are exempted from compliance with section 33 (2) of the Act and regulation 3 (2) of the Regulations in respect of any offer or allotment of specified securities.

(2) Those exemptions are subject to the conditions that—

(a) The specified issuer—

(i) Has appointed a person to act as a statutory supervisor; and

(ii) Has signed a deed of participation with the statutory supervisor; and

(iii) Has otherwise complied with section 33 (3) of the Act and regulation 25 of the Regulations (in so far as that regulation requires a deed of participation to include provisions specifying the matters set out in clauses 1 to 5, 6 (2), 7, and 8 of the Sixth Schedule) and regulation 26 of the Regulations (in so far as that regulation requires a deed of participation to contain clauses 1, 2, and 4 of the Seventh Schedule)—

as if the specified security were a participatory security and as if the specified issuer were the manager; and

(b) The deed of participation contains, in addition to the provisions and clauses specified in the Sixth Schedule of the Regulations (other than clause 6 (1)) and the Seventh Schedule of the Regulations (other than clause 3), the provisions set out in Schedule 2; and

(c) The registered prospectus states in a prominent position—

(i) That the investor should seek independent professional advice before subscribing for any specified securities; and

(ii) If the retirement village to which the scheme relates is, or is to be, subject to any development debt,—

(A) That the ability of the specified issuer to complete the development in respect of the retirement village to

which the scheme relates is subject to the terms and conditions under which that development debt is, or is to be, incurred; and

(B) Any material terms and conditions in respect of that development debt; and

(iii) That—

(A) The specified issuer has established and maintains a procedure that involves the determination by the New Zealand Retirement Villages Association or the Insurance and Savings Ombudsman or an independent person appointed by the statutory supervisor of any complaint or dispute between the specified issuer and a security holder or the liable entity and a security holder in relation to the specified security; and

(B) The specified issuer and the liable entity are bound by the decision of that Association, Ombudsman, or independent person in respect of that complaint or dispute; and

(iv) That, before subscribing for any specified securities, an investor is entitled to the most recent audited financial statements of the specified issuer and of any liable entity, free of charge, upon request; and

(v) That any subscriber is entitled, in respect of consecutive accounting periods, to copies of the most recent audited financial statements of—

(A) The specified issuer; and

(B) Any liable entity; and

(C) The scheme—

free of charge, upon request (if those financial statements are not otherwise available in accordance with clause 5 (2) (c) or clause 5 (3) (a)); and

(d) If the whole or part of the development of the retirement village to which the scheme relates is conditional on the fulfilment of any requirement,—

(i) The registered prospectus contains a description of that requirement; and

(ii) The specified issuer does not allot any specified security before that requirement has been complied with; and

(iii) Each subscription for specified securities and any interest on that subscription are held by a trustee on behalf of the subscriber in a trust account (which is audited annually by a qualified auditor) until the specified securities have been allotted;

(e) The registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 3 (unless clause 5 (3) applies to the scheme in which case the registered prospectus is not required to contain the information, statements, certificates, and other matters specified in clauses 8, 23 to 37, 40, and 41 of Schedule 3).

4. Certain issuers exempt from certain provisions of the Securities Act 1978 and regulation 3 (3) of the Securities Regulations 1983—(1) Every specified issuer and every person acting on

its behalf are exempted from compliance with sections 37 (2), 37A (2), and 53 (6) of the Act and regulation 3 (3) of the Regulations in respect of any offer or allotment of specified securities.

(2) Those exemptions are subject to the conditions that—

(a) The deed of participation contains, in addition to the provisions and clauses specified in the Sixth Schedule of the Regulations (other than clause 6 (1)) and the Seventh Schedule of the Regulations (other than clause 3), the provisions set out in Schedule 2; and

(b) The registered prospectus states in a prominent position—

(i) That the investor should seek independent professional advice before subscribing for any specified securities; and

(ii) If the retirement village to which the scheme relates is, or is to be, subject to any development debt,—

(A) That the ability of the specified issuer to complete the development relating to the retirement village to which the scheme relates is subject to the terms and conditions under which that development debt is, or is to be, incurred; and

(B) Any material terms and conditions in respect of that development debt; and

(iii) That—

(A) The specified issuer has established and maintains a procedure that involves the determination by the New Zealand Retirement Villages Association or the Insurance and Savings Ombudsman or an independent person appointed by the statutory supervisor of any complaint or dispute between the specified issuer and a security holder or the liable entity and a security holder in relation to the specified security; and

(B) The specified issuer and the liable entity are bound by the decision of that Association, Ombudsman, or independent person in respect of that complaint or dispute; and

(iv) That, before subscribing for any specified securities, an investor is entitled to the most recent audited financial statements of the specified issuer and of any liable entity, free of charge, upon request; and

(v) That any subscriber is entitled, in respect of consecutive accounting periods, to copies of the most recent audited financial statements of—

(A) The specified issuer; and

(B) Any liable entity; and

(C) The scheme—

free of charge, upon request (if those financial statements are not otherwise available in accordance with clause 5 (2) (c) or clause 5 (3) (a)); and

(c) If the whole or part of the development of the retirement village to which the scheme relates is conditional on the fulfilment of any requirement,—

(i) The registered prospectus contains a description of that requirement; and

- (ii) The specified issuer does not allot any specified security before that requirement has been complied with; and
- (iii) Each subscription for specified securities and any interest on that subscription are held by a trustee on behalf of the subscriber in a trust account (which is audited annually by a qualified auditor) until the specified securities have been allotted;
- (d) The registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 3 (unless clause 5 (3) applies to the scheme in which case the registered prospectus is not required to contain the information, statements, certificates, and other matters specified in clauses 8, 23 to 36, 39, and 41 of Schedule 3).

5. Certain issuers exempted from section 37A (1) (e) of the Securities Act 1978—(1) Every specified issuer and every person acting on its behalf are exempted from compliance with section 37A (1) (e) of the Act in respect of any offer of specified securities of which that person is the issuer.

(2) That exemption is subject to the conditions, if, at the date of issue of the registered prospectus, the retirement village to which the scheme relates has not been completed or the development debt has not been repaid, that—

- (a) No allotment of any specified security is made, if the date of allotment would be more than 15 months after the date of the balance sheet contained in the registered prospectus; and
- (b) No allotment of any specified security is made, if the date of allotment would be more than 9 months after the date of the balance sheet contained in the registered prospectus, unless the registered prospectus is accompanied by a certificate that—
 - (i) Relates to the registered prospectus; and
 - (ii) Is signed on behalf of the specified issuer by at least 2 directors (or, if the specified issuer has only 1 director, by that director); and
 - (iii) Is dated no later than 9 months after the date of the balance sheet contained in the registered prospectus; and
 - (iv) States that, in the opinion of the specified issuer after due enquiry,—
 - (A) The financial position shown in the balance sheet has not materially and adversely changed during the period from the date of that balance sheet to the date of the certificate; and
 - (B) The registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer or give proper emphasis to adverse circumstances; and
- (c) If—
 - (i) The specified issuer's financial statements are the scheme's financial statements, the registered prospectus is accompanied by the most recent audited financial statements for the scheme for the 6-month period from the date of the balance sheet contained in the registered prospectus that comply with the Financial Reporting Act 1993 and clauses 25 and 30 of Schedule 3 (except that they need not be audited); or

(ii) The specified issuer's financial statements are different from the scheme's financial statements, the registered prospectus is accompanied by the most recent financial statements for the scheme for the 6-month period from the date of the balance sheet contained in the registered prospectus that contain the information and other matters specified in clauses 23 to 37 and 40 of Schedule 3 (except that they need not be audited).

(3) That exemption is subject to the further conditions, if, at the time of issue of the registered prospectus, the scheme has been completed and the development debt repaid without the need to refinance or incur any other obligation, that—

(a) If—

(i) The specified issuer's financial statements are the scheme's financial statements, the registered prospectus is accompanied by the most recent audited financial statements for the scheme that comply with the Financial Reporting Act 1993 and clauses 25, 30, 41 (1) (g), and 41 (2) of Schedule 3; or

(ii) The specified issuer's financial statements are different from the scheme's financial statements, the registered prospectus is accompanied by the most recent audited financial statements for the scheme in the manner specified in clauses 23 to 37, 40, and 41 of Schedule 3; and

(b) The registered prospectus is accompanied by a certificate that—

(i) Relates to the registered prospectus; and

(ii) Is signed on behalf of the specified issuer by at least 2 directors (or, if the specified issuer has only 1 director, by that director); and

(iii) Is dated not later than the date of registration of the most recent audited financial statements for the scheme; and

(iv) States that, in the opinion of the specified issuer after due inquiry,—

(A) The financial position shown in the most recent audited balance sheet has not materially and adversely changed during the period from the date of the most recent audited balance sheet to the date of the certificate; and

(B) The registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer or give proper emphasis to adverse circumstances; and

(v) Either—

(A) States the information contained in the registered prospectus pursuant to clauses 15 to 18 of Schedule 3 is correct; or

(B) Contains current statements of the information specified in clauses 15 to 18 of Schedule 3, unless that information is already contained in the scheme's most recent audited financial statements; and

(c) The registered prospectus contains, or is accompanied by, a certificate of the statutory supervisor that it considers the retirement village to which the scheme relates has been

- completed and the development debt has been repaid without the need to refinance or incur any other obligation; and
- (d) The date of allotment of securities would be no more than 5 years after the specified date of the prospectus.

SCHEDULES

Cl. 2 (1)

SCHEDULE 1 SPECIFIED ISSUERS

North Shore Villages Limited.

Cls. 3 (2) (b), 4 (2) (a)

SCHEDULE 2

ADDITIONAL PROVISIONS TO BE CONTAINED IN DEEDS OF PARTICIPATION

1. Additional duties of statutory supervisor—The statutory supervisor must exercise reasonable diligence to obtain and examine copies of—

- (a) The most recent audited financial statements; and
- (b) If available, interim 6-monthly financial statements—
of the scheme, of the specified issuer, and of any liable entity.

2. Duties and liabilities of specified issuer—The specified issuer must—

- (a) Ensure that the accounting records relating to the scheme are audited at least once a year by a qualified auditor; and
- (b) Give to the statutory supervisor a copy of the most recent audited financial statements of—
 - (i) The scheme; and
 - (ii) The retirement village to which the scheme relates (if the most recent audited financial statements for the retirement village are different from the most recent audited financial statements for the scheme); and
 - (iii) The specified issuer; and
 - (iv) Any liable entity—
as soon as those financial statements are available, and in any event within 5 months of the end of the applicable accounting period; and
- (c) Give to holders of specified securities, free of charge, on request, a copy of—
 - (i) The most recent audited financial statements of—
 - (A) The scheme; and
 - (B) The specified issuer; and
 - (C) Any liable entity; and
 - (ii) A current registered prospectus for the scheme; and
- (d) Prepare at the commencement of each accounting period a forecast statement of operating expenditure for the scheme specifying the amounts that must be met by holders of specified securities for the ensuing year; and

SCHEDULE 2—*continued*ADDITIONAL PROVISIONS TO BE CONTAINED IN DEEDS OF PARTICIPATION—
continued

- (e) Give copies of the forecast statement to the statutory supervisor and to the holders of specified securities within 3 months of the commencement of the accounting period; and
- (f) Give to the statutory supervisor, prior to the redemption of a specified security, sufficient information to satisfy the statutory supervisor that the security has been redeemed in accordance with the terms of the deed of participation; and
- (g) Establish, and maintain at all times, a separate account at a registered bank that is used only for the collection and distribution of maintenance costs of the scheme for which the specified security holders are liable; and
- (h) Pay into, and distribute from, that separate bank account all receipts and payments on account of those maintenance costs; and
- (i) Establish and maintain a procedure that involves the determination by the New Zealand Retirement Villages Association or the Insurance and Savings Ombudsman or an independent person appointed by the statutory supervisor of any complaint or dispute between the specified issuer and a security holder or the liable entity and a security holder in relation to any specified security; and
- (j) Be bound by the determination of that Association, Ombudsman, or independent person in respect of any such complaint or dispute.

SCHEDULE 3

Cls. 3 (2) (e), 4 (2) (d)

MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES

1. Main terms of offer—(1) The name of the offeror, address of its registered office (or, if it does not have a registered office, its address) in New Zealand.

(2) A brief description of the securities being offered.

(3) The maximum number or amount of the securities being offered.

(4) The range of prices or other consideration to be paid or provided for the securities being offered.

2. Name and address of manager and liable entities—(1) The name, address, and technical or professional qualifications (if any) of—

(a) The manager of the scheme; and

(b) The manager of the retirement village (if that manager is different from the manager of the scheme); and

(c) Any liable entity; and

(d) Every director of the manager of the scheme or manager of the retirement village or liable entity, as the case may be.

(2) If the manager or any manager of the retirement village or liable entity, or (if the manager or any such manager of the retirement village or liable entity is a body corporate or unincorporate) director of that manager or liable entity, has, during the 5 years preceding the specified date, been—

(a) Adjudged bankrupt or is insolvent:

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (b) Convicted of any crime involving dishonesty within the meaning of section 2 (1) of the Crimes Act 1961:
- (c) Prohibited from acting as a director of a company:
- (d) Placed in statutory management or receivership,—
a statement to that effect including the name and any alternative or former name or names of that manager, liable entity, or director concerned.

3. Details of incorporation of manager and liable entities—(1) If the manager or any liable entity is a body corporate,—

- (a) The statute or other authority by or under which the company is incorporated; and
 - (b) The date and country of incorporation; and
 - (c) The date of registration in New Zealand (if that date is different from the date of incorporation); and
 - (d) The registered number (if any); and
 - (e) The place (if any) in New Zealand where a public file relating to the incorporation or registration of the company is kept.
- (2) A brief description of the principal activities of the company and, to the extent not included in subclause (1), of any material development relating to the company during the 5 years preceding the specified date.

4. Advisers—(1) The names of any auditors, bankers, sharebrokers, solicitors, and securities registrar for the scheme.

(2) The names, addresses, and qualifications of any experts named in the registered prospectus.

(3) If the offer of securities is underwritten, the name and address of the underwriter.

5. Statutory supervisor—(1) The name of the statutory supervisor for the scheme.

(2) A statement to the effect that the statutory supervisor does not guarantee the repayment of the securities or the payment of interest on the securities.

(3) A statement by the statutory supervisor that, at the time of issue of the registered prospectus, the offer of specified securities complies with the relevant provisions of the deed of participation.

6. Description of scheme and development of scheme—(1) A description of the scheme, including—

- (a) A description of the retirement village to which the scheme relates and any development in respect of the scheme; and
 - (b) A description of any services that form part of, or are promoted in association with, the scheme; and
 - (c) A description of the rights of the holders of specified securities in relation to those services.
- (2) A description of the scheme (including any development in respect of the scheme) during the 5 years preceding the specified date.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

(3) A brief description of the nature and use of the principal fixed assets used for the purposes of the scheme, and a statement whether and by whom those assets will be owned or leased.

7. Liabilities for holders of specified securities—A description, and (if practicable) quantification, of all liabilities (including potential and contingent liabilities) that a person will or may incur as a holder of specified securities.

8. Summary of financial statements—(1) A financial statement in summary form (and, if practicable, in tabular form) in respect of the scheme.

(2) The amounts in the financial statement required by subclause (1) must be amounts that appear in financial statements giving a true and fair view of the results and state of affairs of the scheme for the period concerned, or, if no such statements have been prepared, amounts that would have appeared in such statements if they had been prepared.

(3) The amounts that appear in the financial statement required by subclause (1) must include,—

(a) In respect of each of the 5 consecutive accounting periods preceding the date of the balance sheet set out in the registered prospectus, amounts showing—

(i) Sale or other gross operating revenues:

(ii) Management expenses:

(iii) Total interest expense:

(iv) The net profit or loss before taking account of taxation and extraordinary items:

(v) The total provided for, or credited by way of, taxation:

(vi) The net profit or loss before taking account of extraordinary items:

(vii) The total of any extraordinary items (net or taxation) that derive from events outside the ordinary activities of the scheme:

(viii) The net profit or loss after taking account of extraordinary items:

(ix) Distributions or appropriations of net profit or loss:

(x) The amount of any expenditure on repairs and maintenance:

(xi) The amount of any provision for repairs and maintenance or, if no provision has been made, a statement to that effect:

(b) A description of the nature of any item that is of such incidence and size, or of such nature, that its disclosure is necessary to explain the performance of the group:

(c) As at the end of each accounting period specified in paragraph (a), amounts showing—

(i) Total assets:

(ii) Total tangible assets:

(iii) Total liabilities:

(iv) Total shareholders' funds.

(4) A statement whether or not the amounts stated pursuant to subclauses (2) and (3) have been taken from audited financial statements.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

(5) The financial statement required by subclause (1) must also show the net tangible asset backing per unit of the specified securities being offered at the date of the latest balance sheet set out in the registered prospectus calculated in accordance with each of the following assumptions:

- (a) All the specified securities had been allotted, and the subscriptions received, before that date;
 - (b) All the specified securities had been allotted, and the subscriptions received, before that date and all outstanding securities that are convertible into securities of the class being offered had been converted before that date (if there are variable rates of conversion having effect at different times, at the next available rate of conversion).
- (6) In respect of the amounts stated pursuant to subclauses (2) and (3),—
- (a) A description of the nature of any item that is of such incidence and size, or of such nature, that its disclosure is necessary to explain the performance of the group or extraordinary items;
 - (b) A description (and, if practicable, quantification) of the effect on those amounts of any material changes in the activities of the scheme and of any material changes in the accounting policies used, that occurred during the periods to which the amounts relate.

9. Plans, prospects, and forecasts—(1) A brief description of the plans that the manager has in respect of the scheme, including the estimate of the cost and the sources of finance that will be required for the plans.

(2) A statement as to the prospects of the scheme and any material information that may be relevant to the development (if any) of the scheme.

(3) The statement required by subclause (1) must include a description of special trade factors and risks that—

- (a) Are not mentioned elsewhere in the registered prospectus; and
- (b) Are not likely to be known or anticipated by the general public; and
- (c) Could materially affect the prospects of the scheme.

(4) In the case of a scheme that has not commenced business or has commenced business within 12 months of the specified date,—

(a) Either—

(i) A feasibility study of the scheme stating—

(A) All assumptions on which it is based; and

(B) The proposed distribution of any gross earnings of the scheme between the promoters, managers, and holders of specified securities relating to the scheme;
or

(ii) A statement that such a feasibility study is attached to or accompanies the registered prospectus; and

(b) If a reference is made in the registered prospectus to proposed (or expected) earnings or a rate of return, the reference must be accompanied by forecast financial statements showing—

(i) The method of calculation of the stated earnings or rate of return; and

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

(ii) The period of time expected to elapse before the stated earnings are, or the expected return is, achieved.

(5) If, at the time of issue of the registered prospectus, the scheme has not been completed and the development debt has not been repaid, a forecast statement of cash flows for the scheme for—

- (a) The 2 accounting periods commencing on the date of the latest balance sheet of the scheme; or
- (b) If there is no such balance sheet, the 3 accounting periods commencing on the specified date and ending on each respective balance date after the specified date.

(6) Without limiting the information to be included in the forecast statement required by subclause (5), that forecast statement must comply with FRS-29 except that it must include all the applicable information that is required by FRS-10 to be included in a statement of cash flows.

(7) If a person guarantees the repayment of any development debt or any interest payable on any development debt, a description of that guarantee, including the circumstances in which it may be withdrawn.

10. Minimum subscription—The minimum amount that, in the opinion of the manager, must be raised by the issue of the securities in order to provide the sums (or, if any part of the minimum amount is to be met in any other manner, the balance of the sums) required to be provided in respect of each of the following matters:

- (a) The purchase price of any property purchased or to be purchased which is to be met in whole or in part out of the proceeds of the offer:
- (b) Any preliminary expenses and commission payable in whole or in part out of the proceeds of the offer:
- (c) Working capital:
- (d) The repayment of any money borrowed in respect of any of the matters specified in paragraphs (a) to (c).

11. Guarantors—(1) If the registered prospectus or an advertisement relating to the scheme states or implies that a person guarantees the repayment of the specified securities offered or any part of the repayment of the specified securities or the payment of any interest or other money to holders of specified securities, the following matters in respect of each such person:

- (a) The name of the person:
- (b) A description, and (if practicable) quantification, of the liability of the person to holders of specified securities:
- (c) If the liability of the person to holders of specified securities is secured by a mortgage or charge over any of the person's assets, particulars of the mortgage or charge:
- (d) The amount of the net tangible assets of the person as shown in the person's most recent audited balance sheet, together with a statement of any qualifications in the auditor's report that reflect on the statement of those assets in the balance sheet.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

(2) If there is no audited balance sheet of the person dated within 18 months of the specified date,—

- (a) The figure given for the amount of that person's net tangible assets in the registered prospectus must be that as at a date stated in the registered prospectus (being a date not earlier than 6 months before the specified date); and
- (b) The registered prospectus must include a statement to the effect that the figure for that person's net tangible assets has not been taken from an audited balance sheet.

12. Acquisition of business or equity securities—(1) Despite any other provision of this clause, this clause does not apply in respect of any business or equity securities if—

- (a) The registered prospectus contains a balance sheet in accordance with clause 24 (1); and
- (b) The consideration paid or payable, or proposed to be paid, for the acquisition of the business or equity securities is not more than one-fifth of the amount of the total tangible assets shown in that balance sheet.

(2) If a business or equity securities have been acquired for the purposes of the scheme at any time in the 2 years preceding the specified date, the following information:

- (a) A brief description of the activities of—
 - (i) That business; or
 - (ii) The business carried on by the specified issuer of those equity securities,—
in the course of the period that began 5 years before the specified date and ended on the date on which the business, or equity securities, were acquired:
- (b) In respect of that business or the specified issuer of those equity securities, the matters specified in clause 8 (other than subclauses (3) (b) (v) and (5)) of the First Schedule of the Regulations in respect of the 5 accounting periods preceding the specified date.

(3) If—

- (a) A business or equity securities have been acquired for the purposes of the scheme at any time in the period between the date of the latest balance sheet set out in the registered prospectus and the specified date; or
- (b) The registered prospectus contains a statement to the effect that it is intended that a business or equity securities will be acquired for the purpose of the scheme,—

the following information:

- (c) The amount of the consideration paid or payable, or proposed to be paid, for the business or equity securities:
- (d) A brief description of that business, or of the business carried on by the specified issuer of those equity securities, in the course of the 5 years before the specified date:
- (e) In respect of that business or the specified issuer of those securities, the matters specified in clause 8 (other than subclauses (3) (b) (v)

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

and (5)) of the First Schedule of the Regulations in respect of the 5 accounting periods preceding the specified date, and the matters specified in clauses 23 to 38 of the First Schedule of the Regulations.

13. Securities paid up otherwise than in cash—In respect of all specified securities relating to the scheme that, within the 5 years preceding the specified date, have been allotted, or have been subscribed for and are to be allotted, as fully or partly paid up otherwise than in cash, the following particulars:

- (a) A description (sufficient to identify it) of each class of security:
- (b) In respect of each class of security, the extent to which the securities are paid up otherwise than in cash:
- (c) In respect of each class of security, a description of the consideration for which the securities have been allotted or are to be allotted.

14. Options to subscribe for securities of scheme—(1) If an option to subscribe for specified securities is granted to, or is proposed to be granted to, any person by or on behalf of the offeror or a manager or promoter, the following information:

- (a) In respect of each class of the securities that are under option,—
 - (i) A description of the securities that are under option:
 - (ii) The total number of securities:
 - (iii) The subscription price of each security:
 - (iv) The consideration (if any) given or to be given for each option and the expiry date of each option:
- (b) The total number of each class of securities under option to, or for the benefit of, each of the following classes of persons:
 - (i) The offeror, promoter, and manager:
 - (ii) If the offeror, promoter, or manager is a body corporate or unincorporated, the directors and principal officers of any of them or of any subsidiary of any of them:
 - (iii) The employees of the offeror, promoter, or manager and, if the offeror or promoter or manager is a body whether corporate or unincorporated, the employees of any subsidiary of the offeror, promoter, or manager.

(2) Paragraph (b) of subclause (1) does not apply if the option is granted or is proposed to be granted on the same terms and on a pro rata basis to all holders of specified securities of the same class as those to which the option relates.

15. Manager's interests—(1) If a manager (or, if a manager is a body whether corporate or unincorporated, the manager or a director or principal officer of the manager) is entitled to remuneration for services in respect of the scheme, particulars of the nature of the services.

(2) If any material transaction has been entered into at any time in the 5 years preceding the specified date, or is to be entered into on or after the specified date,—

- (a) Between any person on behalf of the scheme and a manager of the scheme; or

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (b) Between any person on behalf of the scheme and, if the manager is a body whether corporate or unincorporated,—
 - (i) Any body corporate related to the manager; or
 - (ii) Any director or proposed director of the manager or any body corporate related to the manager; or
 - (c) Between any person on behalf of the scheme and any immediate relative of—
 - (i) A manager; or
 - (ii) If the manager is a body whether corporate or unincorporated, any director or proposed director of the manager or of any body corporate related to the manager; or
 - (d) Between any person on behalf of the scheme and any company more than half of whose share capital was or will be held, directly or indirectly, at the date of the transaction, by—
 - (i) A manager; or
 - (ii) If the manager is a body whether corporate or unincorporated, any director or proposed director of the manager or of any body corporate related to the manager; or
 - (iii) Any immediate relative of a person mentioned in subparagraph (i) or subparagraph (ii),—
- the following information:
- (e) A description of the property acquired, or to be acquired, under the transaction; and
 - (f) The cost of the property acquired, or to be acquired, under the transaction to the person by whom it has been or is to be acquired under the transaction; and
 - (g) A brief description of the other terms of the acquisition of the property; and
 - (h) The cost of the property to the person disposing of the property under the transaction; and
 - (i) The date on which the person disposing of the property under the transaction acquired the property.

16. Promoter's interests—(1) The full name of every promoter of the specified securities being offered.

(2) If a promoter of the specified securities (or, if the promoter is a body whether corporate or unincorporated, the promoter or a director or principal officer of the promoter) is entitled to remuneration for services in respect of the scheme, particulars of the amount of remuneration and of the nature of the services.

(3) If any material transaction has been entered into at any time in the 5 years preceding the specified date, or is to be entered into on or after the specified date,—

- (a) Between any person on behalf of the scheme and a promoter of the scheme; or
- (b) Between any person on behalf of the scheme and, if the promoter is a body whether corporate or unincorporated,—
 - (i) Any body corporate related to the promoter; or

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (ii) Any director or proposed director of the promoter or of any body corporate related to the promoter; or
- (c) Between any person on behalf of the scheme and any immediate relative of—
 - (i) A promoter of the scheme; or
 - (ii) If the promoter is a body whether corporate or unincorporated, any director or proposed director of the promoter or of any body corporate related to the promoter; or
- (d) Between any person on behalf of the scheme and any company more than half of whose share capital was or will be held directly or indirectly, at the date of the transaction, by—
 - (i) A promoter of the scheme; or
 - (ii) If the promoter is a body whether corporate or unincorporated, any director or proposed director of the promoter or of any body corporate related to the promoter; or
 - (iii) Any immediate relative of a person mentioned in subparagraph (i) or subparagraph (ii),—

the following information:

- (e) A description of the property acquired, or to be acquired, under the transaction; and
- (f) The cost of the property acquired, or to be acquired, under the transaction to the person by whom it has been or is to be acquired under the transaction; and
- (g) A brief description of the other terms of the acquisition of the property; and
- (h) The cost of the property to the person disposing of the property under the transaction; and
- (i) The date on which the person disposing of the property under the transaction acquired the property.

17. Material contracts—In relation to every material contract entered into in respect of the scheme at any time in the 2 years preceding the specified date (not being a contract entered into in the ordinary course of business of the scheme),—

- (a) Its date; and
- (b) The names of the parties to it; and
- (c) Its general nature.

18. Pending proceedings—A brief description of any legal proceedings or arbitrations that—

- (a) Are pending at the specified date; and
- (b) May have a material adverse effect on the scheme.

19. Issue expenses—Particulars of any issue expenses, including—

- (a) Their amount or estimated amount; and
- (b) In respect of any commission payable,—
 - (i) The rate of commission; and
 - (ii) The persons or classes of persons to whom the commission is payable.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

20. Ranking of specified securities—(1) The aggregate amount (as at the date of the latest balance sheet of the scheme or of any liable entity) of any securities that are secured by a mortgage or charge over any of the assets of the scheme or of the borrowing group of any liable entity and that rank in point of security ahead of the securities being offered.

(2) The aggregate amount (as at the date of the latest balance sheet of the scheme or of any liable entity) of any securities that are secured by a mortgage or charge over any of the assets of the scheme or of the borrowing group of any liable entity and that rank in point of security equally with the securities being offered.

21. Terms of deed of participation—(1) All the terms of the deed of participation relating to the scheme.

(2) Subclause (1) does not apply if—

(a) A copy of the deed is attached to the registered prospectus; and

(b) The registered prospectus states that a copy of the deed is attached to the registered prospectus.

(3) A statement by the statutory supervisor that, at the time of issue of the registered prospectus,—

(a) The offer of securities complies with any relevant provisions of the deed of participation; and

(b) The statutory supervisor does not guarantee repayment of the specified securities or the payment of any interest.

22. Other terms of offer and securities—All terms of the offer and all terms of the securities being offered, not elsewhere set out in the registered prospectus, other than those—

(a) Implied by law; or

(b) Set out in a document that—

(i) Is registered with a public official; and

(ii) Is available for public inspection; and

(iii) Is referred to in the registered prospectus.

23. Application—Clauses 24 to 37 apply only if, before the specified date the scheme has commenced business, and—

(a) An asset has been acquired by the scheme; or

(b) A debt has been incurred in respect of the scheme.

24. Balance sheets—(1) An audited balance sheet of the scheme giving a true and fair view of the state of affairs—

(a) As at the end of the most recently completed accounting period of the scheme; or

(b) If there is no such accounting period, as at any stated date that is not more than 4 months before the specified date.

(2) Nothing in clauses 25 to 37 limits the matters that may be included—

(a) In any balance sheet required by this clause; or

(b) In notes to any such balance sheet which are set out in the registered prospectus.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

25. Participants' funds—Each balance sheet referred to in clause 24, or notes to the balance sheet which are set out in the registered prospectus, must state the following matters:

- (a) The aggregate amount of funds contributed by, or credited to, holders of specified securities relating to the scheme:
- (b) In respect of each class of specified security,—
 - (i) A brief description of each class of specified security sufficient to identify it together with a statement of any voting rights, rights to profits, and maturity date relating to profits:
 - (ii) The number of securities allotted and still outstanding, and the amounts credited as paid up in respect of the allotted securities, and details of any changes to the allotted securities since the commencement of the most recently completed accounting period of the scheme (other than such details as are set out elsewhere in the registered prospectus):
 - (iii) The total nominal value of the securities of that class that have not been allotted, and, if there are any restrictions upon allotment, particulars of those restrictions:
- (c) The amount of retained earnings credited to holders of specified securities, and details of changes to the amount of retained earnings since the commencement of the most recently completed accounting period of the scheme (other than such details as are set out elsewhere in the registered prospectus):
- (d) A description of the rights of the holders of each class of specified securities to share in the distribution of retained earnings.

26. Deferred taxation—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state the amount of any provision for deferred taxation.

27. Term liabilities—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state the following matters:

- (a) The amount of term liabilities:
- (b) The amount of term liabilities owing to managers and promoters of the scheme and the rate or rates of interest payable in respect of the term liabilities:
- (c) An analysis of the term liabilities by maturity, showing in respect of each financial year in which term liabilities are repayable, the amounts repayable in that year together with a summary of the interest rates on those amounts (if practicable, in the form of a weighted average interest rate) for that year:
- (d) The amount of term liabilities that are secured and a brief description of the nature of the security.

28. Current liabilities—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state the following matters:

- (a) The aggregate amount of current liabilities; and

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (b) In addition (as separate items), such of the following amounts included in that aggregate amount as are material:
- (i) The total of trade accounts payable:
 - (ii) The total of bank loans and overdraft:
 - (iii) The total of provisions for taxation:
 - (iv) The total of provisions for distribution of income:
 - (v) The amount of each other category of current liability (and a description of the current liability):
 - (vi) The total of any provisions made for repairs and maintenance or, if no provision has been made, a statement to that effect:
- (c) The amounts of current liabilities owing to managers and promoters of the scheme and the rate or rates of interest payable in respect of those current liabilities:
- (d) The amount of the current liabilities that are secured and a brief description of the nature of the security.

29. Commitments and contingent liabilities—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state the following matters:

- (a) Particulars (including the estimated amount of particulars and the period of commitment) of any material commitments for capital expenditure (other than those included as liabilities in the balance sheet):
- (b) Particulars (including the estimated amount of the particulars and the period of commitment) of any material commitments in respect of leases and hire purchase agreements (other than those included as liabilities in the balance sheet):
- (c) A brief description of any material contingent liabilities, and the estimated amount of any material contingent liabilities.

30. Fixed assets—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state the following matters:

- (a) The aggregate amount of fixed assets:
- (b) A classification of the fixed assets into the following categories, and, in respect of each category, the basis or bases of valuation, the aggregate amount on each basis, and accumulated depreciation shown as a deduction from each aggregate amount:
 - (i) Freehold land and buildings:
 - (ii) Leasehold land and buildings:
 - (iii) Machinery and equipment:
 - (iv) Other fixed assets:
- (c) A brief description of the assets to which paragraph (b) (iv) relates:
- (d) The aggregate of the latest Government valuation of land and buildings, with the dates of the valuations, and the cost of any additions to land and buildings subsequent to the relevant valuation.

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

31. Investments—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state—

- (a) The aggregate amount of investments; and
- (b) In addition (as separate items) the amounts included within that aggregate amount in respect of—
 - (i) The total of investments in any manager or promoter of the scheme at cost (less amounts written off) or market value (if ascertainable), whichever is the lesser:
 - (ii) If material, the total of securities issued by the Crown or a local authority; and, if this amount is not market value, the total market value:
 - (iii) The total of other investments in bodies corporate listed on the New Zealand Stock Exchange, and, if this amount is not market value, the total market value.

32. Current assets—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state—

- (a) The aggregate amount of current assets; and
- (b) In addition (as separate items), such of the following amounts included within that aggregate amount as are material:
 - (i) The aggregate amount of cash, bank balances, and deposits with money market dealers:
 - (ii) The amount of specified securities held, and, if this amount is not market value, the total market value:
 - (iii) The total of accounts receivable (showing as separate deductions from the total of accounts receivable any provisions for income yet to mature and doubtful debts):
 - (iv) Total inventories (showing as separate items, if appropriate, the amounts for raw materials, work in progress, and finished goods, and the basis of valuation):
 - (v) Each other category of current assets (and a description of the current assets):
- (c) In respect of the accounts receivable referred to in subparagraph (iii) of paragraph (b), the amounts of accounts receivable owing from managers and promoters.

33. Intangible and other assets—Each balance sheet referred to in clause 24, or notes to that balance sheet which are set out in the registered prospectus, must state—

- (a) The aggregate amount of intangible assets; and
- (b) In addition (as separate items), such of the following amounts included within that aggregate amount as are material:
 - (i) Total goodwill:
 - (ii) The total of patents and trade marks:
- (c) The aggregate of all assets not specified in any provision of clauses 30 to 32 or of paragraph (a) or paragraph (b):

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (d) In addition (as separate items), the nature and amount of each material asset included in the aggregate stated pursuant to paragraph (c).

34. Profit and loss statements—(1) An audited profit and loss statement of the scheme giving a true and fair view of the results of the scheme—

- (a) For the most recently completed accounting period of the scheme; or
(b) If there is no such accounting period, for the period from the date of commencement of the scheme to the date of the balance sheet set out in the registered prospectus pursuant to clause 24 (1) (b).
(2) Nothing in clause 35 limits the information that may be included—
(a) In any profit and loss statement required by this clause; or
(b) In notes to any such profit and loss statement which are set out in the registered prospectus.

35. Contents of profit and loss statement—Each profit and loss statement referred to in clause 34, or notes to that profit and loss statement which are set out in the registered prospectus, must state the following matters:

- (a) Sales or other gross operating revenue (and the basis of calculation of the sales or other gross operating revenue);
(b) The amount of investment income;
(c) The amount of audit fees and expenses;
(d) The amount of manager's remuneration;
(e) The amount of provisions made for depreciation and obsolescence;
(f) The total interest expense;
(g) If material, total leasing and renting expense;
(h) The amount and a description of each category of abnormal items that derive from the ordinary activities of the scheme;
(i) If material, the amount of any foreign exchange gains or losses recognised in the profit and loss statement distinguishing between realised and unrealised gains or losses;
(j) The net profit or loss before taxation;
(k) The amount provided for, or credited by way of, taxation, and a brief explanation of any difference between this amount and the amount that would need to be provided for, or would be credited by way of, taxation if the whole of the profit or loss referred to in paragraph (j) were taxed at the standard rate applicable to companies;
(l) The net profit or loss after taking account of taxation and before taking account of the matters specified in paragraph (m);
(m) The amount and a description of each category of extraordinary items (net of taxation) that derive from events outside the ordinary activities of the scheme;
(n) The net profit or loss after taking account of taxation and of the matters specified in paragraph (m);
(o) The amount of any expenditure on repairs and maintenance;

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (p) The amount of any provision made for repairs and maintenance or, if no provision has been made, a statement to that effect.

36. Statement of cash flows—A statement of cash flows for the scheme giving a true and fair view of those cash flows for the period to which the profit and loss statement set out in the registered prospectus pursuant to clause 34 (1) relates, which statement must be audited.

37. Other information—The financial statements specified in clauses 24 to 36 must include,—

- (a) In the case of a profit and loss statement relating to the most recently completed accounting period of the scheme, comparative figures for the preceding accounting period;
- (b) In the case of a balance sheet as at the end of the most recently completed accounting period of the scheme, comparative figures as at the end of the preceding accounting period;
- (c) A statement of all material accounting policies (stating the basis of accounting used); and of any changes to material accounting policies;
- (d) If amounts of monetary assets or liabilities have been converted to New Zealand currency for inclusion in a balance sheet, in respect of each material amount,—
 - (i) A description of the amount;
 - (ii) A statement as to the currency from which it was converted, and the exchange rate used to convert the amount, and the rate (if known) at which the amount will be settled.

38. Places of inspection of documents—The times and places where any material contract disclosed pursuant to clause 17, or a copy of the contract, may be inspected without fee by any person who so requests during the currency of the registered prospectus.

39. Other material matters—Particulars of any material matters relating to the offer of specified securities (other than matters elsewhere set out in the registered prospectus and contracts entered into in the ordinary course of business of the scheme).

40. Manager's statement—A statement by the manager as to whether, after due enquiry by him or her in relation to the period between the date of the latest balance sheet set out in the registered prospectus and the specified date, there have, in his or her opinion, arisen any circumstances that materially adversely affect—

- (a) The profitability or activities of the scheme; or
- (b) The value of its assets; or
- (c) The ability of the scheme to pay its liabilities due within the next 12 months.

41. Auditor's report—(1) A copy of a report by a qualified auditor, signed by him or her (either in his or her name or that of his or her firm), stating—

SCHEDULE 3—*continued*MATTERS REQUIRED IN REGISTERED PROSPECTUS FOR SPECIFIED SECURITIES—
continued

- (a) The work done by the auditor; and
- (b) The scope and limitations of the audit; and
- (c) The existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the scheme; and
- (d) Whether the auditor has obtained all information and explanations that he or she has required; and
- (e) Whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the scheme; and
- (f) Whether or not, in the auditor's opinion, the financial statements that are referred to in clauses 24 to 37 and that are required to be audited—
 - (i) Comply with this notice; and
 - (ii) Subject to this notice, comply with generally accepted accounting practice; and
 - (iii) Give a true and fair view of the state of affairs of the scheme as at the date of the financial statements and of the results and cash flows of the scheme 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 respect in which they do not; and
- (g) Whether the amounts stated pursuant to clauses 8 (2), 8 (3), 12 (2), and 12 (3) have been taken from audited financial statements, and, whether or not the amounts have been correctly taken.

(2) If the registered prospectus contains a forecast, the auditor's report must contain a statement in the following form: "In our opinion the forecasts, so far as the accounting policies and calculations are concerned, have been properly compiled on the footing of the assumptions made or adopted by the specified issuer set out at pp.... of this prospectus and are presented on a basis consistent with the accounting policies normally adopted by the (entity)."

Dated at Wellington this 12th day of August 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 day after the date of its notification in the *Gazette*, exempts offers by an issuer named in Schedule 1 of certain debt and participatory securities in respect of retirement villages, subject to a number of conditions, from certain provisions of the Securities Act 1978 and the Securities Regulations 1983.

The notice also treats certain debt securities in respect of retirement villages as if they were participatory securities.

Schedule 2 of the notice specifies the additional provisions that must be contained in deeds of participation relating to offers of specified securities.

Schedule 3 specifies the matters that must be contained in the registered prospectus.

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

Date of notification in *Gazette*: 14 August 1997.

This notice is administered in the Securities Commission.