

Reprint
as at 1 July 2011



**Securities Act (Kiwi Income
Property Trust) Exemption Notice
2005**

(SR 2005/138)

Securities Act (Kiwi Income Property Trust) Exemption Notice 2005: expired,
on 1 July 2011, by clause 3(2).

Pursuant to the Securities Act 1978, the Securities Commission gives
the following notice (to which is appended a statement of reasons of
the Securities Commission).

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together
with other explanatory material about this reprint.

This notice is administered by the Securities Commission.

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Notice

1 Title

This notice is the Securities Act (Kiwi Income Property Trust) Exemption Notice 2005.

2 Commencement

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

3 Expiry

- (1) Clauses 5 to 8, 13 to 15, and 18 expire on the close of 31 May 2006.
- (2) The rest of this notice expires on the close of 30 June 2011.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

convertible securities means mandatory convertible notes that will be converted, or are or will become convertible at the option of the manager or the holder of the securities, into units in the trust

manager means the manager of the trust

registered prospectus means the registered prospectus for the offer of convertible securities and for the offer of units to be allotted on conversion of those securities

Regulations means the Securities Regulations 1983

trust means the unit trust called Kiwi Income Property Trust established under the trust deed

trust deed means the trust deed for the trust dated 21 August 1992 between the manager and the trustee, as amended

trustee means the trustee of the trust

units means units in the trust.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption for trustee from sections 33(2), 37, 37A, 38A, 41, 43, and 51 to 54B of Act and Regulations

[Expired]

Clause 5: expired, on 1 June 2006, by clause 3(1).

6 Conditions of exemption in clause 5

[Expired]

Clause 6: expired, on 1 June 2006, by clause 3(1).

7 Exemption for manager from sections 33(2), 41, and 43 of Act

[Expired]

Clause 7: expired, on 1 June 2006, by clause 3(1).

8 Conditions of exemption in clause 7

[Expired]

Clause 8: expired, on 1 June 2006, by clause 3(1).

9 Exemption for manager from section 37A(1)(a) of Act

The manager and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of the allotment to any subscriber for convertible securities in whose favour an offer of those securities has been renounced.

10 Exemption for manager from section 37A(1)(c) of Act

The manager and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of any

units that are, or are to be, allotted under the terms of the convertible securities.

11 Conditions of exemption in clause 10

The exemption in clause 10 is subject to the conditions that—

- (a) the convertible securities have been allotted under a registered prospectus that contains particulars of all material matters relating to the offer of the units to be allotted on conversion of the convertible securities; and
- (b) before allotment of the units on conversion of the convertible securities, the following documents have been sent to every person who was, at the time the documents were sent, a registered holder of the same class of convertible securities in respect of which the units are to be allotted:
 - (i) a copy of the trust's most recent audited financial statements that comply with the Financial Reporting Act 1993 and with the provisions of any other relevant enactments; and
 - (ii) if the date of allotment of the units on conversion of the convertible securities would be later than 9 months after the date of the financial statements referred to in subparagraph (i), a copy of—
 - (A) interim financial statements for the period beginning on the day after the date of the financial statements referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date, that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements and with the provisions of any other relevant enactment (except that the interim financial statements need not be audited); and
 - (B) a statement containing a description of the trust; and
- (c) the date of allotment of the units on conversion of the convertible securities is not more than 9 months after

the date of the financial statements or interim financial statements referred to in paragraph (b).

12 Exemption for manager from section 54B(3)(b) of Act

The manager and every person acting on its behalf are exempted from section 54B(3)(b) of the Act to the extent that it requires financial statements of the trustee as issuer of the convertible securities to be sent to any person on request.

13 Exemption for manager from regulation 7A of Regulations

[Expired]

Clause 13: expired, on 1 June 2006, by clause 3(1).

14 Exemption for manager from regulation 12(1) of Regulations

[Expired]

Clause 14: expired, on 1 June 2006, by clause 3(1).

15 Conditions of exemption in clause 14

[Expired]

Clause 15: expired, on 1 June 2006, by clause 3(1).

16 Exemption for manager from regulation 23 of Regulations

The manager and every person acting on its behalf are exempted from regulation 23 of the Regulations in respect of convertible securities and units.

17 Condition of exemption in clause 16

The exemption in clause 16 is subject to the condition that New Zealand Exchange Limited has approved the statements in the registered prospectus or advertisement, as the case may be, that refer to—

- (a) quoting the convertible securities or units; or
- (b) any rule of New Zealand Exchange Limited.

18 Exemption for manager from Schedule 2 of Regulations
[Expired]

Clause 18: expired, on 1 June 2006, by clause 3(1).

Dated at Wellington this 24th day of May 2005.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette*. *Clauses 5 to 8, 13 to 15, and 18* expire on 31 May 2006. The rest of the notice expires on 30 June 2011.

The notice relates to the offer of mandatory convertible notes (the **notes**) for subsequent conversion into units in Kiwi Income Property Trust (the **trust**). The broad effect of the exemptions (which are subject to conditions) granted in the notice is that a single prospectus only is required in respect of the offer of the notes and their later conversion into units in the trust, with the burden of disclosure falling upon the manager of the trust.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- securities convertible into units in a unit trust are debt securities for the purposes of the Securities Act 1978 (the **Act**). Compliance with the Act can cause difficulties in this situation

and can create an extra layer of requirements to comply with if the unit trustee of a unit trust is required to appoint a trustee for the debt securities; and

- the securities to be offered in this case are mandatory convertible notes. They cannot be redeemed by subscribers except in very limited circumstances. Accordingly, subscribers for these notes appear to receive a vested interest in the property of the trust. As such, the Commission considers that the notes confer rights falling within the definition of unit in section 2(1) of the Act. The Commission considers it preferable to grant an exemption under which the issuer's disclosure obligations are discharged by the manager of the trust, on conditions that require the unit trustee to act as trustee of the debt securities; and
- the exemption from the need to provide an investment statement prior to subscription to any subscriber for the notes in whose favour an offer of those notes has been renounced is consistent with other Commission exemptions and addresses a practical difficulty in complying with the law; and
- the exemption relating to disclosure on conversion is consistent with other Commission exemptions granted in respect of convertible securities and requires all matters that must be disclosed to be disclosed at the time of the offer of the convertible securities; and
- strict compliance with regulation 23 of the Securities Regulations 1983 in this case could result in material information about listing of the securities not being provided to investors; and
- disclosure of financial and other information relating to the unit trust is most relevant to investors and is achieved by the manager assuming the disclosure obligations as issuer of the notes.

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Notes**1 General**

This is a reprint of the Securities Act (Kiwi Income Property Trust) Exemption Notice 2005. The reprint incorporates all the amendments to the notice as at 1 July 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see*

<http://www.pco.parliament.govt.nz/legislation/reprints.shtml>
or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Securities Act (Kiwī Income Property Trust) Exemption Notice 2005 (SR 2005/138): clause 3
