

Reprint
as at 1 October 2008

**Securities Act (Te Kaikoura
Investments Limited) Exemption
Notice 2003**

(SR 2003/265)

Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003: expired, on 1 October 2008, by clause 3.

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

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Note

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

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

This notice is administered in the Securities Commission.

Schedule 2
**Matters to be specified in independent registered
valuer's report**

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1 Title

This notice is the Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003.

2 Commencement

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

3 Expiry

This notice expires on the close of 30 September 2008.

4 Interpretation

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

Act means the Securities Act 1978

certificate of title means a certificate of title or a computer unit title register, as appropriate, issued under the Unit Titles Act 1972

generally accepted accounting practice has the same meaning as in section 3 of the Financial Reporting Act 1993

proportionate ownership scheme means a contributory scheme offered by Te Kaikoura that involves the investment of money in circumstances where each subscriber for specified participatory securities—

- (a) will acquire a stratum estate; and
- (b) will be issued with a certificate of title in his or her name for the relevant stratum estate

real property means all that property comprised within Certificates of Title MB4B/216, MB5A/527, and MB5A/526 (Marlborough Land Registry), or as may be subsequently subdivided into stratum estates in accordance with the Unit Titles Act 1972

registered valuer means a person who is a registered valuer within the meaning of the Valuers Act 1948

registrable transfer instrument means a transfer instrument that may be used for the purpose of registering the transfer of any land or estate or interest in land under the Land Transfer Act 1952 in accordance with section 90 of that Act

Regulations means the Securities Regulations 1983

specified participatory securities means participatory securities issued by Te Kaikoura in respect of the proportionate ownership scheme

stratum estate means a stratum estate in freehold that comprises a portion of the whole of the real property

Te Kaikoura means Te Kaikoura Investments Limited.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
- (a) that registered valuer and any director of Te Kaikoura are relatives, one being the spouse of the other or being the parent, brother, sister, or child of the other or of the spouse of the other; or
 - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
 - (i) a shareholder or director of Te Kaikoura; or
 - (ii) a shareholder or director of any company that is a holding company or a subsidiary of Te Kaikoura or that is a partner or joint venturer with Te Kaikoura; or
 - (c) there is any other relationship or interest between the registered valuer and Te Kaikoura that is likely to influence the judgement of the registered valuer.
- (3) 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 specified participatory securities

Te Kaikoura and every person acting on behalf of Te Kaikoura are exempted from sections 33(3), 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.

6 Conditions for exemption in clause 5

The exemption in clause 5 is subject to the following conditions:

- (a) that it is a term of each contract entered into between subscribers for specified participatory securities and Te Kaikoura for the subscription and allotment of specified participatory securities—
 - (i) that, as soon as practicable after the acquisition of the real property in accordance with the proportionate ownership scheme, each subscriber for specified participatory securities will be provided with a registrable transfer instrument that enables that subscriber to be issued with a certificate of title for the relevant stratum estate in the name of the subscriber; and
 - (ii) that every subscriber for specified participatory securities will receive a copy of audited annual financial statements in respect of the performance, financial position, and cash flows of the proportionate ownership scheme, being financial statements that comply with the Financial Reporting Act 1993, no later than 5 months after each balance date of the proportionate ownership scheme:
- (b) that no subscriptions for specified participatory securities will be received by, or on behalf of, Te Kaikoura unless a contract referred to in paragraph (a) has been entered into with the relevant subscriber:
- (c) that all subscriptions for specified participatory securities and any interest on those subscriptions are held in trust and must, immediately after each of them is received, be paid into a trust account:
- (d) that no subscription is paid out of the trust account referred to in paragraph (c) unless it is paid—
 - (i) to Te Kaikoura—
 - (A) after the relevant subscriber has been provided with a registrable transfer instrument that enables that subscriber to be issued with a certificate of title for the rele-

- vant stratum estate in the name of the subscriber; and
 - (B) all conditions relating to the receipt of subscriptions by Te Kaikoura contained in the relevant contract referred to in paragraph (a) have been satisfied; or
 - (ii) to—
 - (A) Te Kaikoura in satisfaction of Te Kaikoura's right to forfeit and retain the part of a subscription that forms a deposit in accordance with the relevant contract referred to in paragraph (a); and
 - (B) the relevant subscriber, to the extent that any of the relevant subscription remains after the payment referred to in subparagraph (A) has been made; or
 - (iii) to the relevant subscriber in accordance with paragraph (h); or
 - (iv) to the relevant subscriber in accordance with paragraph (i):
 - (e) that the trust account referred to in paragraph (c) is maintained by a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998 and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies:
 - (f) that every subscriber for specified participatory securities has, before entering into the contract referred to in paragraph (a), received a copy of a written statement that—
 - (i) sets out the matters referred to in Schedule 1; and
 - (ii) is signed by the directors of Te Kaikoura; and
 - (iii) is dated not more than 2 months before the subscriber's receipt of the written statement:
 - (g) that Te Kaikoura's written statement contains, or has attached, a copy of a report by an independent registered valuer that—
 - (i) sets out the matters referred to in Schedule 2; and
 - (ii) is signed by the registered valuer; and

- (iii) is dated not more than 4 months before the date of Te Kaikoura's written statement:
- (h) if the event described in paragraph (d)(i)(A) has not occurred within 36 months of a subscription being received by, or on behalf of, Te Kaikoura (referred to in this paragraph and paragraph (i) as the settlement period), then no specified participatory securities may be allotted to the relevant subscriber in relation to that subscription and that subscription must promptly be returned to the relevant subscriber, unless, before the end of the settlement period,—
 - (i) Te Kaikoura has given the relevant subscriber written notice that the event described in paragraph (d)(i)(A) will not occur before the end of the settlement period and that the subscriber is entitled to have that subscription returned at the end of the settlement period; and
 - (ii) the subscriber and Te Kaikoura have both signed a written agreement that clearly states that the settlement period is to be extended and specifies the period of time by which the settlement period is to be extended:
- (i) if a subscriber signs a written agreement in accordance with paragraph (h)(ii) and the event described in paragraph (d)(i)(A) has not occurred within the extended period of time specified in that agreement, then no specified participatory securities may be allotted to that subscriber in relation to his or her or its subscription and that subscription must promptly be returned to that subscriber.

Schedule 1

cl 6(f)

Matters to be specified or contained in Te Kaikoura's statement

1 Date of Te Kaikoura's statement

In a prominent place, the date as at which Te Kaikoura's statement is prepared.

Important information for investors

2 Information at front of Te Kaikoura's statement

A statement in the following form (to be set out at the front of Te Kaikoura's statement):

“IMPORTANT INFORMATION

“(The information in this section is required under the Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003 (being a notice given under the Securities Act 1978).)

“Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

“Warning

“This offer is exempt under the Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.

“Choosing an investment

“When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

“*What sort of investment is this?*

“*Who is involved in providing it for me?*

“*How much do I pay?*

“*What are the charges?*

“*What returns will I get?*

“*What are my risks?*

“*Can the investment be altered?*

“*How do I cash in my investment?*

“*Who do I contact with enquiries about my investment?*

“*Is there anyone to whom I can complain if I have problems with the investment?*

“*What other information can I obtain about this investment?*

“Engaging an investment adviser

“An investment adviser must give you a written statement that contains information about the adviser and his or her ability to give advice. You are strongly encouraged to read that document and con-

sider the information in it when deciding whether or not to engage an adviser.

“Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes, and carry different levels of risk.

“The written statement should contain important information about the adviser, including—

- “• relevant experience and qualifications, and whether dispute resolution facilities are available to you; and
- “• what types of investments the adviser gives advice about; and
- “• whether the advice is limited to investments offered by 1 or more particular financial institutions; and
- “• information that may be relevant to the adviser’s character, including certain criminal convictions, bankruptcy, any adverse findings by a court against the adviser in a professional capacity, and whether the adviser has been expelled from, or prohibited from joining, a professional body; and
- “• any relationships likely to give rise to a conflict of interest.

“The adviser must also tell you about fees and remuneration before giving you advice about an investment. The information about fees and remuneration must include—

- “• the nature and level of the fees you will be charged for receiving the advice; and
- “• whether the adviser will or may receive a commission or other benefit from advising you.

An investment adviser commits an offence if he or she does not provide you with the information required.”

Schedule 1 clause 2: amended, on 7 March 2008, by clause 3(1) of the Securities Act (Amendments to Exemption Notices Affecting Investment Adviser Information) Exemption Notice 2008 (SR 2008/60).

What sort of investment is this?

3 Description of proportionate ownership scheme

A description of the proportionate ownership scheme, the interests in the proportionate ownership scheme being offered, and how long the scheme has been in operation.

4 Description of real property

A description of the real property to be purchased in accordance with the proportionate ownership scheme.

5 Material contracts relating to improvements to real property

Material details of the contracts relating to the building or improvements proposed by Te Kaikoura on the real property.

6 Covenants, etc, in respect of real property

A description of any covenants, conditions, restrictions, and easements in respect of the real property (whether or not they are registered on the certificate of title of the real property).

7 Land information memorandum relating to real property

Whether or not any matters referred to in a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 have been referred to the independent registered valuer for the purposes of the valuation report referred to in clause 6(g) of this notice, and a description of those matters.

8 Options, etc, in respect of real property

A description of any option, buyback, or similar arrangement, and of any rental guarantees in relation to the real property.

9 Material details concerning rights of occupation of real property

- (1) Material details concerning any rights of occupation to which the real property is subject, whether by lease, licence, or otherwise, including—
 - (a) the term of the agreement; and
 - (b) any rights of renewal; and
 - (c) any rent reviews; and (d) the financial standing of tenants or occupiers; and (e) any guarantees or other special provisions.
- (2) A statement—

- (a) of the place where copies of any agreement relating to those rights of occupation may be inspected free of charge; and
- (b) whether or not any existing occupant of the real property has failed to meet any material obligations under the terms of any agreement that confers a right of occupation.

Who is involved in providing it for me?

10 Information about persons associated with proportionate ownership scheme

The names and addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) Te Kaikoura and its directors; and
- (b) the manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme; and
- (c) the solicitor referred to in clause 6(e) of this notice; and
- (d) the sales organisation (if any) through which the offer of specified participatory securities is to be made to the subscribers; and
- (e) the names and addresses of any promoters.

11 Qualifications and experience of manager of proportionate ownership scheme

The qualifications and experience of the manager of the proportionate ownership scheme.

12 Management agreements relating to real property

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the real property, including—
 - (a) the term of the agreement; and
 - (b) the management fee; and

- (c) the procedures for making decisions that may affect the interests of subscribers for specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

13 Interests of Te Kaikoura, manager, promoter, and others

- (1) This clause applies if Te Kaikoura, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of Te Kaikoura or of the manager or of the promoter—
 - (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
 - (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
 - (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
 - (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
 - (e) is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the real property.
- (2) The following information if this clause applies:
 - (a) the names of the parties to the transaction and the date of the transaction; and
 - (b) a brief description of the material terms of the transaction; and
 - (c) the nature of the interest in the transaction.

How much do I pay?**14 Purchase price**

The purchase price to be paid by a subscriber for his or her or its stratum estate.

What are the charges?**15 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to Te Kaikoura or a promoter, to an associated person of Te Kaikoura or of a promoter, or to the proportionate ownership scheme by a subscriber (whether directly or indirectly, including by deduction):
 - (a) entry charges:
 - (b) trustee, administration, or management charges:
 - (c) expenses or overhead charges:
 - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
 - (e) early termination charges:
 - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
 - (g) alteration charges:
 - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by Te Kaikoura, or from the proportionate ownership scheme, to a promoter or administration manager or investment manager, or to an associated person of Te Kaikoura or of the promoter or of the administration manager or of the investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of Te Kaikoura or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of Te Kaikoura or any other person to alter any of the charges applicable to the specified participatory securities.

16 Amount of charges

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) can, at the date of Te Kaikoura's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) cannot, at the date of Te Kaikoura's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

17 Remuneration of Te Kaikoura relating to proportionate ownership scheme

The remuneration and other benefits Te Kaikoura or any associate of Te Kaikoura will receive in connection with the proportionate ownership scheme and the manner in which this remuneration and other benefits are to be paid or provided.

What returns will I get?

18 Income and expenses relating to proportionate ownership scheme

Material details concerning the manner in which all income and expenses relating to the proportionate ownership scheme are to be accounted for and the basis upon which profits are to be distributed.

What are my risks?

19 Liabilities relating to proportionate ownership scheme

A description and, if practicable, quantification of all liabilities (including contingent liabilities) that a subscriber for specified participatory securities will or may incur as a holder of specified participatory securities.

Can the investment be altered?**20 Alteration of securities**

A brief description of any right of a subscriber, Te Kaikoura, or any other person to alter the terms of a subscriber's interest in the proportionate ownership scheme.

How do I cash in my investment?**21 Early termination**

A brief description of any right of Te Kaikoura, a subscriber, or any other person to terminate a subscriber's interest in the proportionate ownership scheme.

22 Right to sell security

- (1) A statement as to whether or not a subscriber is entitled to sell his or her interest in the proportionate ownership scheme to another person and, if so, whether in the opinion of Te Kaikoura there is an established market for those sales.
- (2) If any charges are payable by a subscriber on a sale, a brief description of those charges.

Who do I contact with enquiries about my investment?**23 Enquiries about the proportionate ownership scheme**

The names or descriptions of officers, employees, or agents of Te Kaikoura to whom enquiries about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.

Is there anyone to whom I can complain if I have problems with the investment?**24 Complaints about the proportionate ownership scheme**

- (1) The names or descriptions of officers, employees, or agents of Te Kaikoura to whom complaints about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the proportionate ownership scheme can be made to a trustee or an industry body, a statement to this

effect and the addresses and business telephone numbers of those people.

- (3) A statement as to whether or not complaints about the proportionate ownership scheme can be made to an Ombudsman and, if so, the address and business telephone number of the Ombudsman.

What other information can I obtain about this investment?

25 Annual information

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by Te Kaikoura.

26 On request information

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from Te Kaikoura; and
(b) explaining how the request should be made; and
(c) of whether any charge may be made for that information and the amount of the charge.

Other information

27 Other material information

Any other information that would be material to a prospective subscriber's decision to invest in the proportionate ownership scheme.

Schedule 2

cl 6(g)

**Matters to be specified in independent
registered valuer's report**

1 Name and address of registered valuer

The name and address of the registered valuer and a brief description of that registered valuer's qualifications.

2 Statement by registered valuer

A statement that the valuation report is made by the registered valuer as an independent registered valuer.

3 Purpose of report

A statement that the registered valuer is making the valuation report for the purposes of the proportionate ownership scheme and for use by prospective subscribers for specified participatory securities.

4 Description of real property

A description of the real property and confirmation that the plans and specifications of the new buildings and improvements that are proposed in respect of the real property have been inspected by the registered valuer.

5 Covenants, etc, in respect of real property

A list of any covenants, conditions, restrictions, easements, and any other estates or interests that appear on the certificate of title in respect of the real property as at the date of the registered valuer's report.

6 Present use of real property

The present use of the real property.

7 Compliance with regional or district plan rules

- (1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the real property.
- (2) Whether or not the intended use of the real property for the purposes of the proportionate ownership scheme complies with the rules, rights, consents, or other statutory requirements referred to in subclause (1).

8 Rateable value of real property

The rateable value of the real property.

9 Leasehold interests or tenancy arrangements in respect of real property

- (1) Current rental payable, and a statement as to whether or not that rental is being paid, in respect of any existing leasehold interest in the real property or any existing tenancy arrangement relating to the real property.
- (2) Other material matters concerning any leasehold interests or tenancy arrangements.

10 Registered valuer's opinion as to capital value of real property

The opinion of the registered valuer as to the capital value of the real property, free of charges, and the date of, and basis for, that capital value.

11 Basis of valuation

The basis upon which the registered valuer's valuation of the real property is made and any assumptions used in making the valuation, including any matters referred to the valuer as stated in clause 7 of Schedule 1

12 Income from real property

The amount of income that the real property can reasonably be expected to produce on an annual basis under the conditions prevailing at the date of the registered valuer's report.

13 Other material matters relating to real property

Any other matters concerning the real property that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

14 Consent to distribution of report

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective subscribers for specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 23rd day of September 2003.

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

J Diplock,
Chairperson.

[LS]

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2008.

This notice applies to offers by Te Kaikoura Investments Limited of participatory securities in a contributory scheme for ownership interests in real property.

The notice exempts those offers, subject to conditions, from the prospectus and investment statement requirements and various other requirements of the Securities Act 1978.

These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 and with a report by a registered valuer that contains the information specified in Schedule 2.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 25 September 2003.

**Securities Act (Amendments to
Exemption Notices Affecting
Investment Adviser Information)
Exemption Notice 2008**

(SR 2008/60)

Notice

1 Title

This notice is the Securities Act (Amendments to Exemption Notices Affecting Investment Adviser Information) Exemption Notice 2008.

2 Commencement

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

4 Transitional provision

The amendments made by this notice only apply to documents that are distributed on or after 30 April 2008.

Dated at Wellington this 28th day of February 2008.

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

[Seal]

J Diplock,
Chairperson.

Date of notification in *Gazette*: 6 March 2008.

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 - 3 List of amendments incorporated in this eprint (most recent first)
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Notes

1 *General*

This is an eprint of the Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003. It incorporates all the amendments to the Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003 as at 1 October 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Securities Act (Te Kaikoura Investments Limited) Exemption Notice 2003 (SR 2003/265): clause 3

Securities Act (Amendments to Exemption Notices Affecting Investment Adviser Information) Exemption Notice 2008 (SR 2008/60): clause 3(1)
