

Securities Act (Capricorn Society Limited) Exemption Notice 2003

(SR 2003/298)

Securities Act (Capricorn Society Limited) Exemption Notice 2003: expired, on 1 July 2007, by clause 3.

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

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Notice

- 1 Title**
This notice is the Securities Act (Capricorn Society Limited) Exemption Notice 2003.

Note

This notice is administered by the Securities Commission.

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 June 2007.

Clause 3: amended, on 22 December 2006, by clause 4 of the Securities Act (Capricorn Society Limited) Exemption Amendment Notice 2006 (SR 2006/384).

4 Interpretation

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

Act means the Securities Act 1978

company means Capricorn Society Limited, an overseas company registered on the overseas register under Part 18 of the Companies Act 1993

Regulations means the Securities Regulations 1983

specified equity securities means shares issued by the company under the Corporations Act 2001 of the Commonwealth of Australia

transacting shareholder means a shareholder of the company if the shareholder, having regard to the nature of the co-operative activity carried on by the company, does 1 or more of the following

- (a) supplies or provides goods or services to the company or, having ceased to provide goods or services to the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so:
- (b) purchases or acquires goods or services from the company or, having ceased to purchase or acquire goods or services from the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so:
- (c) enters into other commercial transactions with the company or, having ceased to enter into other commercial transactions with the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so:

- (d) has incurred an obligation to do an act referred to in any of paragraphs (a), (b), and (c).
- (2) For the purposes of the definition of **transacting shareholder**, a shareholder may carry on the activity referred to with the company in 1 or more of the following ways:
 - (a) directly;
 - (b) through a subsidiary of the company;
 - (c) with another person that the company has arranged to carry on the activity.
- (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.

Clause 4(1) **specified equity securities**: amended, on 22 December 2006, by clause 5 of the Securities Act (Capricorn Society Limited) Exemption Amendment Notice 2006 (SR 2006/384).

5 Exemptions

- (1) The company and every person acting on its behalf are exempted, in respect of any specified equity securities, from—
 - (a) *[Revoked]*
 - (b) section 37A(1)(c) of the Act; and
 - (c) *[Revoked]*
 - (d) section 54 of the Act; and
 - (e) clauses 4 to 9, 11 to 20, 22 to 38, and 40 to 42 of Schedule 1 of the Regulations.
- (2) However, the exemption from clause 40 of Schedule 1 of the Regulations does not apply to a first offer to the public of a class of specified equity securities of the company.

Subclause (1)(a) and (c) was revoked, as from 22 December 2006, by clause 6 Securities Act (Capricorn Society Limited) Exemption Amendment Notice 2006 (SR 2006/384).

6 Condition that securities allotted only to transacting shareholders

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to persons who are, or after allotment will be, transacting shareholders of the company.

7 Conditions about investment statement*[Revoked]*

Clause 7 was revoked, as from 22 December 2006, by clause 7 Securities Act (Capricorn Society Limited) Exemption Amendment Notice 2006 (SR 2006/384).

8 Condition that directors' statement must be attached to investment statement

- (1) The exemptions in clause 5(1)(b) and (e) are subject to the further condition that every copy of the investment statement that is sent or made available more than 9 months after the date of the most recent statement of financial position of the company registered under the Financial Reporting Act 1993 has attached to it (or contained in it) a statement—
 - (a) that is dated 9 months after the date of that statement of financial position; and
 - (b) that is signed by each of the directors of the company (or his or her agent who has been authorised in writing).
- (2) The statement must contain the following matters:
 - (a) particulars of any material matters relating to the offer of specified equity securities other than—
 - (i) matters set out elsewhere in the investment statement, registered prospectus, or most recent financial statements; and
 - (ii) contracts entered into in the ordinary course of business; and
 - (b) a statement as to whether, after due inquiry by them in relation to the period between the date of the most recent statement of financial position and the date of the directors' statement referred to in this clause, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (i) the trading or profitability of the company; or
 - (ii) the value of the assets of the company; or
 - (iii) the ability of the company to pay its liabilities due within the next 12 months.

9 Conditions about financial statements

The exemption in clause 5(1)(b) is subject to the further conditions that—

- (a) a copy of the most recent audited financial statements of the company, being financial statements that comply with the Financial Reporting Act 1993, is attached to, or contained in, every copy of the registered prospectus sent to a person under section 54B of the Act; and
- (b) the company makes available to holders of specified equity securities in New Zealand, free of charge and on request, copies of the most recent annual report and financial statements of the company.

Clause 9 was amended, as from 22 December 2006, by clause 8 Securities Act (Capricorn Society Limited) Exemption Amendment Notice 2006 (SR 2006/384) by substituting the words “The exemption in clause 5(1)(b) is” for the words “The exemptions in clause 5(1)(b) and (c) are”.

10 Condition about payments

The exemptions in clause 5 are subject to the further condition that no transacting shareholder is required to make payments to the company on account of specified equity securities allotted or to be allotted to that shareholder, other than specified equity securities that form part of a transacting shareholder’s original application for specified equity securities, unless—

- (a) the transacting shareholders have agreed, in general meeting, to the requirement to make those payments; and
- (b) adequate provision has been made for transacting shareholders who object to making those payments to withdraw from the company and to be paid, within 6 months of notifying the company of their intention to withdraw, all amounts that, in respect of specified equity securities, they have a right to receive, or are payable to them, or are credited to their accounts.

11 Condition about statement of shareholding in lieu of certificate evidencing securities

- (1) The exemption in clause 5(1)(d) is subject to the further condition that the company sends to each transacting shareholder

annually, and at any time on request, a written statement that sets out—

- (a) the class or classes of specified equity securities held by that shareholder; and
 - (b) the number of specified equity securities in each class held by that shareholder.
- (2) However, this condition does not require the company to send an annual statement to a transacting shareholder if the total number of specified equity securities in each class held by the shareholder has not changed since the most recent of the following dates:
- (a) the date on which this notice comes into force;
 - (b) the date on which a written statement was sent to the shareholder under this clause;
 - (c) the date on which a certificate was sent to the shareholder under section 54 of the Act.

Dated at Wellington this 20th day of October 2003.

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

[Seal]

C A N Beyer,
Member.

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* and expires on the close of 30 June 2008, exempts Capricorn Society Limited, subject to conditions, from various provisions of the Securities Act 1978 and of the Schedule 1 of the Securities Regulations 1983 in respect of certain equity securities.

The exemptions and the conditions on which they are granted are similar to those contained in the Securities Act (Co-operative Companies) Exemption Notice 2002 (SR 2002/403).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 October 2003.
