

**Reprint
as at 1 June 2011**



**Securities Act (Unit Trust Short
Form Prospectus) Exemption
Notice 2006**

(SR 2006/119)

Securities Act (Unit Trust Short Form Prospectus) Exemption Notice 2006:
expired, on 1 June 2011, by clause 3.

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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Schedule
**Matters required to be stated or contained in registered
prospectus**

Notice

- 1 Title**
This notice is the Securities Act (Unit Trust Short Form Prospectus) Exemption Notice 2006.
- 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 31 May 2011.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978
manager has the same meaning as in section 2(1) of the Unit Trusts Act 1960
Regulations means the Securities Regulations 1983
specified financial statements—
(a) means whichever of the following are the most recent:
(i) the most recent financial statements of the unit trust that were sent to all unit holders of the unit trust in accordance with section 11 of the Unit Trusts Act 1960; or
(ii) the financial statements of the unit trust as at the most recent balance date of the unit trust that comply with the Financial Reporting Act 1993; or
(iii) if the unit trust has been in existence for less than 1 year, financial statements of the unit trust as at any stated date that is not more than 4 months before the date on which the prospectus relating to

the specified securities is registered that comply with the Financial Reporting Act 1993; and

- (b) includes, if the unit trust is an issuer within the meaning of section 4 of the Financial Reporting Act 1993, an auditor's report on those statements (as required, if relevant, by section 11(2) of the Unit Trusts Act 1960)

specified securities means units in a unit trust offered only to persons—

- (a) who are already holders of units in that unit trust or holders of securities convertible into units in that unit trust; or

- (b) in whose favour any such offer is renounced

unit trust has the same meaning as in section 2(1) of the Unit Trusts Act 1960.

- (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 from regulation 3(4) of Regulations

Every manager and every person acting on behalf of the manager are exempted from regulation 3(4) of the Regulations in respect of specified securities.

6 Conditions relating to exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that a copy of the specified financial statements—
 - (a) has previously been given or sent to the persons who were, at the time the specified financial statements were given or sent, holders of the same class of securities as the securities held by the persons to whom the offer is being made; or
 - (b) is attached to every registered prospectus relating to the specified securities.
- (2) The exemption is subject to the condition that the registered prospectus relating to the specified securities states or contains the matters set out in the Schedule.

7 Exemption from section 37A(1)(a) of Act

Every manager is exempted from section 37A(1)(a) of the Act in respect of any allotment of specified securities to any subscriber for those securities in whose favour an offer of those securities has been renounced.

Schedule

cl 6(2)

Matters required to be stated or contained in registered prospectus

1 Matters specified in Schedule 3A of Regulations

The matters specified in the following clauses of Schedule 3A of the Regulations:

- (a) clause 1 (description of unit trust):
- (b) clause 4 (description of unit trust and its development):
- (c) clause 5 (unit holder liability):
- (d) clause 8 (guarantors):
- (e) clause 14 (issue expenses):
- (f) clause 15 (other terms of offer and units).

2 Date of statement of financial position

The date of the statement of financial position included in the specified financial statements.

3 Places of inspection of documents

The place or places where copies of the specified financial statements may be obtained free of charge by any person to whom the offer is made.

4 Statement of financial performance and cash flows

(1) If an interim statement of financial position is contained in the registered prospectus in accordance with clause 6 of this Schedule,—

- (a) a statement of financial performance of the unit trust; and
- (b) a statement of cash flows for the unit trust (if required in accordance with an applicable financial reporting standard within the meaning of section 2(1) of the Financial Reporting Act 1993).

(2) The statement of financial performance and statement of cash flows must relate to the period from the date of the last statement of financial position of the unit trust sent to the unit holders in accordance with the Unit Trusts Act 1960, to the date of the interim statement of financial position.

- (3) The statement of financial performance and statement of cash flows must comply with the requirements of the Financial Reporting Act 1993 (except that they need not be audited).

5 Directors' statement

A statement by the directors of the manager as to whether, after due inquiry by them in relation to the period between the date of the latest statement of financial position of the unit trust contained or referred to in the registered prospectus in accordance with this exemption and the Regulations and the specified date, there have, in the manager's opinion, arisen any circumstances that materially adversely affect—

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

6 Interim statement of financial position

If the directors of the manager consider it necessary or desirable (after having regard to section 37A(1)(c) of the Act), an interim statement of financial position of the unit trust that—

- (a) is drawn up as at a stated date that is not more than 9 months after the date of the latest statement of financial position of the unit trust contained in the specified financial statements; and
- (b) complies with the requirements of the Financial Reporting Act 1993 (except that it need not be audited).

Dated at Wellington this 9th day of May 2006.

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

[Seal]

L A J Kavanagh,
Temporary Deputy Chairperson.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 May 2011.

This notice replaces the Securities Act (Unit Trust Short Form Prospectus) Notice 2002 (the **2002 notice**). The 2002 notice exempted every manager of a unit trust, subject to certain conditions, from regulation 3(4) of the Securities Regulations 1983 in respect of offers of units to persons who were already holders of units in the same unit trust. The effect of the 2002 notice was to allow a short form prospectus to be registered in relation to an offer of units to current unit holders. Similar provisions apply to an offer of equity or debt securities (*see* regulation 4 of the Securities Regulations 1983). The 2002 notice also gave an exemption from section 37A(1)(a) of the Securities Act 1978 (the investment statement requirement) for managers of unit trusts in respect of the allotment of securities to persons who have had an offer of securities renounced in their favour. This notice carries forward the effect of the 2002 notice, with no changes of substance.

The Securities Commission considers that the exemptions are appropriate for the following reasons:

- regulation 4 of the Securities Regulations 1983 enables a company to use a short form prospectus when offering equity or debt securities to persons who already hold securities of that company. Regulation 4 allows issuers to provide core information concerning the terms of the securities offered, the prospects and forecasts for the issue, the issue expenses, and the “other main terms of the offer”. Information about the issuer and directors is assumed to have been available to existing security holders and is publicly available:

- the exemption provides a short form prospectus regime for units in unit trusts that is comparable to that provided for equity or debt securities by regulation 4 of the Securities Regulations 1983:
- if a person subscribes for securities renounced in that person's favour, the issuer cannot practicably ensure that the subscriber receives an investment statement. The exemption from section 37A(1)(a) of the Securities Act 1978 is the same as an exemption applicable to renounceable rights offers of equity or debt securities that is contained in the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 May 2006.

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 - 2 Status of reprints
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Notes

1 *General*

This is a reprint of the Securities Act (Unit Trust Short Form Prospectus) Exemption Notice 2006. The reprint incorporates all the amendments to the notice as at 1 June 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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 (Unit Trust Short Form Prospectus) Exemption Notice 2006
(SR 2006/119): clause 3
