

Reprint
as at 1 February 2008

Securities Act (Retirement Villages)
Exemption Notice 1999

(SR 1999/15)

Securities Act (Retirement Villages) Exemption Notice 1999: expired, on 1 February 2008, by clause 1(6).

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.

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1 Title, commencement, and expiry

- (1) This notice may be cited as the Securities Act (Retirement Villages) Exemption Notice 1999.
- (2) This notice (except clause 11 of this notice) comes into force on the day after the date of its notification in the *Gazette*.
- (3) Clause 11 of this notice comes into force on 1 July 1999.
- (4) Clause 10A(1)(a) expires on the close of 31 August 1999.
- (5) Clause 10B(1)(a) expires on the close of 30 September 2000.
- (6) The rest of this notice expires on the close of 31 January 2008.

Subclause (4) was substituted, as from 5 March 1999, by clause 2 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice 1999 (SR 1999/52).

Subclauses (4) was substituted, as from 13 August 1999, by clause 2 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

Subclause (5) was inserted, as from 5 March 1999, by clause 2 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice 1999 (SR 1999/52).

Subclauses (5) was substituted, as from 13 August 1999, by clause 2 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

Subclause (6) was inserted, as from 13 August 1999, by clause 2 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

Subclause (6) was amended, as from 26 September 2003, by clause 3 Securities Act (Retirement Villages) Exemption Amendment Notice (No 2) 2003 (SR 2003/268) by substituting the expression “30 June 2004” for the expression “30 September 2003”.

Subclause (6) was amended, as from 30 June 2004, by clause 3 Securities Act (Retirement Villages) Exemption Amendment Notice 2004 (SR 2004/196) by substituting the expression “30 June 2006” for the expression “30 June 2004”.

Subclause (6) was amended, as from 30 June 2006, by clause 4 Securities Act (Retirement Villages) Exemption Amendment Notice 2006 (SR 2006/160) by substituting the expression “31 January 2008” for the expression “30 June 2006”.

Part 1

Preliminary provisions

This heading was inserted, as from 13 August 1999, by clause 3(1) Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

2 Interpretation

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

Act means the Securities Act 1978

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

Deed of supervision means a trust deed or a deed of participation, as the case may be

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

FRS-29*[Revoked]*

FRS-29: this definition was revoked, as from 30 March 2007, by clause 4 Securities Act (Retirement Villages) Exemption Amendment Notice 2007 (SR 2007/80).

[Revoked]

FRS-42 means the financial reporting standard known as Financial Reporting Standard No 42: Prospective Financial Statements, approved under the Financial Reporting Act 1993.

FRS-42: this definition was inserted, as from 30 March 2007, by clause 4 Securities Act (Retirement Villages) Exemption Amendment Notice 2007 (SR 2007/80).

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

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

Scheme supervisor means a statutory supervisor or a trustee, as the case may be

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 an issuer of specified securities

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:

Village debt means any material liability incurred by the specified issuer or any liable entity in respect of a retirement village to which the scheme relates, being a secured or unsecured liability, including a contingent 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 current liability incurred in the ordinary course of the business of the ongoing operation of the retirement village to which the scheme relates; or
 - (d) A liability, including a contingent liability, that, in the opinion of the specified issuer and its qualified auditor, is not material.
- (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 Application

Nothing in this notice applies to any specified securities to which the Securities Act (Retirement Villages) Exemption Notice 1998¹ applies.

**Part 2
Exemptions****4 Exemption from section 33(2)**

- (1) Every specified issuer and every person acting on its behalf are exempted from section 33(2) of the Act in respect of any specified securities that are debt securities.
- (2) The exemption is subject to the condition 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 Schedule 6 of those regulations) and regulation 26 of the Regulations (in so far as that regulation deems a deed of participation to contain clauses 1, 2, and 4 of Schedule 7 of those regulations); and
 - (iv) The deed of participation contains, in addition to the provisions and clauses specified in Schedule 6 of the Regulations (other than clause 6(1)) and Schedule 7 of the Regulations (other than clause 3), the provisions set out in Schedule 1—
as if the specified security were a participatory security and as if the specified issuer were the manager of the scheme; and
 - (b) The registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 2 unless the conditions in clause 7(2) of this

¹ SR 1998/187

notice apply 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 2; and

- (c) That, before subscribing for any specified securities, an investor is entitled to obtain, on request and free of charge, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993; and
- (d) That any subscriber is entitled to obtain, on request and free of charge, in respect of consecutive accounting periods, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993.

5 Exemption from section 33(3)

- (1) Every specified issuer and every person acting on its behalf are exempted from section 33(3) of the Act in respect of any specified securities that are participatory securities.
- (2) The exemption is subject to the condition that—
 - (a) The specified issuer—
 - (i) Has appointed a person to act as a trustee; and
 - (ii) Has signed a trust deed with the trustee; and
 - (iii) Has otherwise complied with section 33(2) of the Act and regulation 24 of the Regulations; and
 - (iv) The trust deed contains, in addition to the provisions and clauses specified in Schedule 6 of the Regulations and the clauses deemed to be contained in Schedule 7 of the Regulations, the provisions set out in Schedule 1—

as if the specified issuer were the manager of the scheme and as if the trustee were the statutory supervisor; and
 - (b) The registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 2 unless the conditions in clause 7(2) of this notice apply 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 2; and
- (c) That, before subscribing for any specified securities, an investor is entitled to obtain, on request and free of charge, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993; and
 - (d) That any subscriber is entitled to obtain, on request and free of charge, in respect of consecutive accounting periods, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993.

6 Exemption from section 37(2)

- (1) Every specified issuer and every person acting on its behalf are exempted from section 37(2) of the Act in respect of any specified securities.
- (2) The exemption is subject to the condition that—
 - (a) The registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 2 unless the conditions in clause 7(2) of this notice apply 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 2; and
 - (b) The investment statement states in a prominent position if the retirement village to which the scheme relates is, or is to be, subject to any village debt,—
 - (i) 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 village debt is, or is to be, incurred; and
 - (ii) Any material terms and conditions in respect of that village debt; and
 - (c) That—

- (i) The specified issuer has established and undertakes to 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 scheme 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
 - (ii) 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
- (d) That, before subscribing for any specified securities, an investor is entitled to obtain, on request and free of charge, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993; and
- (e) That any subscriber is entitled to obtain, on request and free of charge, in respect of consecutive accounting periods, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993; and
- (f) If the development of the retirement village or the part to which the scheme relates is conditional on the fulfilment of any requirement,—
 - (i) The investment statement 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, on behalf of the subscriber in a trust account (which is audited annually by a qualified auditor) until the specified securities have been allotted, by a trustee corpor-

ation or a person approved by the Commission to act as a trustee under section 48 of the Act.

7 Exemption from section 37A(1)(c)

- (1) Every specified issuer and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of any specified securities if, at the specified date, the scheme has been completed and any village debt has been repaid or extinguished without the need to refinance or incur any other obligation.
- (2) The exemption is subject to the condition—
 - (a) That—
 - (i) The specified issuer has established and undertakes to 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 scheme 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
 - (ii) 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
 - (iii) The deed of supervision contains the provisions set out in Schedule 1; and
 - (b)
 - (c) The prospectus is accompanied by a copy of the most recent audited financial statements, being financial statements that comply with the Financial Reporting Act 1993; and
 - (d) That a subscriber is entitled to obtain, on request and free of charge, in respect of consecutive accounting periods, a copy of the most recent audited financial statements of the specified issuer, the scheme, and of any liable entity, being financial statements that comply with the Financial Reporting Act 1993; and

- (e) The specified issuer has lodged with the Registrar, a certificate that—
 - (i) Relates to the registered prospectus; and
 - (ii) Refers to the most recent audited financial statements for the scheme; and
 - (iii) Is signed on behalf of all the directors by at least 2 directors of the specified issuer (or, if the specified issuer has only 1 director, by that director); and
 - (iv) Is dated not later than the date of registration of the most recent audited financial statements for the scheme, being financial statements that comply with the Financial Reporting Act 1993; and
 - (v) States that, in the opinion of the directors of the specified issuer after due inquiry, 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
 - (vi) Either—
 - (A) States that the information contained in the registered prospectus under clauses 15 to 18 of Schedule 2 is correct; or
 - (B) Contains current statements of the information specified in clauses 15 to 18 of Schedule 2 unless that information is already contained in the scheme's most recent audited financial statements; and
- (f) The registered prospectus contains, or is accompanied by, a certificate of the scheme supervisor that it considers the retirement village to which the scheme relates has been completed and any village debt has been repaid or extinguished without the need to refinance or incur any other obligation.

Subclause (2)(b) was amended, as from 27 June 2003, by regulation 3 Securities Act (Retirement Villages) Exemption Amendment Notice 2003 (SR 2003/147) by inserting the words “and 6 months” after the expression “5 years”.

Subclause (2)(b) was amended, as from 26 September 2003, by clause 4 Securities Act (Retirement Villages) Exemption Amendment Notice (No 2) 2003 (SR 2003/268) by substituting the expression “6 years” for the words “5 years and 6 months”.

Subclause (2)(b) was revoked, as from 30 June 2004, by clause 4 Securities Act (Retirement Villages) Exemption Amendment Notice 2004 (SR 2004/196).

8 Exemption from section 37A(2)

Every specified issuer and every person acting on its behalf are exempted from section 37A(2) of the Act in respect of any specified securities.

9 Exemption from section 53E(2)

- (1) Every specified issuer and every person acting on its behalf are exempted from section 53E(2) of the Act in respect of any specified securities.
- (2) The exemption is subject to the condition that the financial statements relating to the scheme to which the securities relate are audited at least once a year by a qualified auditor.

9A Application of notice to Woodlands Retirement Village Limited

[Revoked]

Clause 9A was inserted, as from 5 March 1999, by clause 3 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice 1999 (SR 1999/52).

Clause 9A was revoked, as from 13 August 1999, by clause 6 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/256).

10 Exemption from regulation 3(2) and (3)

- (1) Every specified issuer and every person acting on its behalf are exempted from regulation 3(2) and (3) in respect of any specified securities.
- (2) The exemption is subject to the condition that the registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 2 unless the conditions in clause 7(2) of this notice apply 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 2.

Part 3

Modified application of notice to certain retirement villages

Part 3 (comprising cls 10A and 10B) was inserted, as from 13 August 1999, by clause 4 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

10A Woodlands Retirement Village Limited

- (1) Nothing in the following provisions applies to Woodlands Retirement Village Limited in respect of an offer of specified securities:
 - (a)
 - (b) Clause 8(3)(a) of Schedule 2 (to the extent that the financial statement in summary form relates to any of the 5 consecutive accounting periods preceding 31 March 1998).
- (2) Subclause (1) is subject to the condition that the registered prospectus contains a financial statement in summary form for the scheme for the accounting period ending on 31 March 1998, taken from Motueka Rest Homes Limited's financial statements for that accounting period that comply with the Financial Reporting Act 1993.

Part 3 (comprising cls 10A and 10B) was inserted, as from 13 August 1999, by clause 4 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

Subclause (1)(a) expired, as from the close of 31 August 1999, pursuant to clause 1(4) Securities Act (Retirement Villages) Exemption Notice 1999 (SR 1999/15).

10B Fitzroy of Merivale (1999) Limited

- (1) Nothing in the following provisions applies to Fitzroy of Merivale (1999) Limited in respect of an offer of specified securities:
 - (a)
 - (b) Clause 8(1), (2), and (3)(a) of Schedule 2 to the extent that the financial statement in summary form relates to any of the 5 consecutive accounting periods ending on or before 30 April 1999.
- (2) Subclause (1) is subject to the condition that the registered prospectus contains—

- (a) An audited statement of financial position for the scheme as at 30 April 1999; and
- (b) An audited statement of financial position for Fitzroy of Merivale (1999) Limited as at 30 April 1999; and
- (c) A summary of statements of financial position for the scheme for each of the 1995 to 1999 financial years; and
- (d) Prospective statements of financial position and financial performance for the scheme for the period commencing on 30 April 1999 and ending on 31 March 2000 and for the period commencing on 1 April 2000 and ending on 31 March 2001 that—
 - (i) Comply with the requirements of Financial Reporting Standard No 29 (Prospective Financial Information), approved under the Financial Reporting Act 1993; and
 - (ii) Include such other information as required by generally accepted accounting practice.

Part 3 (comprising cls 10A and 10B) was inserted, as from 13 August 1999, by clause 4 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265).

Subclause (1)(a) expired, as from the close of 30 September 2000, pursuant to clause 1(5) Securities Act (Retirement Villages) Exemption Notice 1999 (SR 1999/15).

Part 4

Miscellaneous provisions

This heading was inserted, as from 13 August 1999, by clause 5 Securities Act (Retirement Villages) Exemption Notice 1999 Amendment Notice (No 2) 1999 (SR 1999/265)

11 Revocations

The notices specified in Schedule 3 are consequentially revoked.

Schedule 1

Cls 4(2)(a)(iv), 5(2)(a)(iv),
7(2)(a)(iii)

Additional provisions to be contained in deeds of supervision

1 Additional duties of scheme supervisor

The scheme 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, the specified issuer, and any liable entity, being financial statements that comply with the Financial Reporting Act 1993.

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 scheme 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 after 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
 - (e) Prepare, at the commencement of each accounting period, a forecast statement of all income and expenditure, including amounts repayable to security holders;
and
 - (f) Give copies of the forecast statements referred to in paragraphs (d) and (e) to the scheme supervisor and to the holders of specified securities within 3 months after the commencement of the accounting period; and
 - (g) Give to the scheme supervisor, prior to the redemption of a specified security, sufficient information to satisfy the scheme supervisor that the security has been redeemed in accordance with the terms of the deed of supervision; and
 - (h) 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 scheme 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
 - (i) Be bound by the determination of that Association, Ombudsman, or independent person in respect of any such complaint or dispute.
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Schedule 2

Cls 4(2)(b), 5(2)(b), 6(2)(a),
7(2)(e)(vi), 10(2)

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 whether 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;
 - (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

If the manager or any liable entity is a body corporate,—

- (a) The statute or other authority by or under which the body corporate 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; and
- (f) A brief description of the principal activities of the body corporate and, to the extent not included in subclause (1), of any material development relating to the body corporate 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 Scheme supervisor

- (1) The name of the scheme supervisor for the scheme.
- (2) A statement to the effect that the scheme supervisor does not guarantee the repayment of the securities or the payment of interest on the securities.
- (3) A statement by the scheme 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 supervision.

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 during the 5 years preceding the specified date (including any development in respect of the scheme).
- (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 statement of financial position contained or referred to in the registered prospectus, amounts showing—
 - (i) Total operating revenues:
 - (ii) Management expenses:
 - (iii) Total interest expense:

- (iv) The net surplus or deficit before taking account of taxation and extraordinary items:
- (v) The total provided for, or credited by way of, taxation:
- (vi) The net surplus or deficit before taking account of extraordinary items:
- (vii) The total of any extraordinary items (net of taxation) that derive from events outside the ordinary activities of the scheme:
- (viii) The net surplus or deficit after taking account of extraordinary items:
- (ix) Distributions or appropriations of net surplus or deficit:
- (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 equity.
- (4) A statement whether or not the amounts stated pursuant to subclauses (2) and (3) have been taken from audited financial statements.
- (5) If the amounts stated in the financial statement required by subclause (1) have been taken from audited financial statements but the auditor's report was qualified, a statement to this effect explaining what the qualification was.
- (6) 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 statement of financial position contained or referred to 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).
- (7) In respect of the amounts stated pursuant to subclauses (2) and (3),—
- (a) A description of the nature of any extraordinary items:
 - (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) 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 prospective financial information showing—
 - (i) The method of calculation of the stated earnings or rate of return; and
 - (ii) The period of time expected to elapse before the stated earnings are, or the expected rate of return is, achieved.
- (5) If, at the time of issue of the registered prospectus, the scheme has not been completed or the village debt has not been repaid or extinguished, a prospective statement of cash flows for the scheme—
- (a) If the scheme has commenced business and an asset has been acquired by the scheme, or a debt has been incurred in respect of the scheme, for the 2 accounting periods commencing on the date of the latest statement of financial position of the scheme that is contained or referred to in the prospectus; or
 - (b) If the scheme has not commenced business, and no asset has been acquired by the scheme or no debt incurred in respect of the scheme, for 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 prospective statement of cash flows required by subclause (5), the prospective statement of cash flows must comply with FRS-42, except that it must include all the applicable informa-

tion that is required by FRS-10 to be included in a statement of cash flows.

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

Subclause (6) was amended, as from 30 March 2007, by clause 5 Securities Act (Retirement Villages) Exemption Amendment Notice 2007 (SR 2007/80) by substituting “FRS-42” for “FRS-29”.

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 that 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 statement of financial position, together with a statement of any qualifications in the auditor's report that reflect on the statement of those assets in the statement of financial position.
- (2) If there is no audited statement of financial position 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 statement of financial position.

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 statement of financial position 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 statement of financial position.
- (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 Schedule 1 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 statement of financial position contained or referred to 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) and (5)) of Schedule 1 of the Regulations in respect of the 5 accounting periods preceding the specified date, and the matters specified in clauses 23 to 38 of Schedule 1 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 unincorporate, 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 unincorporate, 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 unincorporate, 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
 - (b) Between any person on behalf of the scheme and, if the manager is a body, whether corporate or unincorporate,—
 - (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 unincorporate, 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 unincorporate, 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 unincorporate, 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 unincorporate,—
 - (i) Any body corporate related to the promoter; or
 - (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 unincorporate, 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 unincorporate, 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 schemes),—

- (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.

20 Ranking of specified securities

- (1) The aggregate amount (as at the date of the latest statement of financial position 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 statement of financial position 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 supervision

- (1) All the terms of the deed of supervision 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 scheme 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 supervision; and
 - (b) The scheme 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

- (1) 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.
- (2) Clauses 24(1), 34(1), and 36 do not apply if—
 - (a) The most recent audited financial statements for the scheme have been registered under the Financial Reporting Act 1993; and
 - (b) The registered prospectus contains a statement that any subscriber is entitled, in respect of consecutive accounting periods, to copies of the most recent audited financial statements of—
 - (i) The specified issuer; and
 - (ii) Any liable entity; and
 - (iii) The scheme.

24 Statements of financial position

- (1) An audited statement of financial position 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 statement of financial position required by this clause; or
 - (b) In notes to any such statement of financial position that are set out in the registered prospectus.

25 Participants' funds

- Each statement of financial position referred to in clause 24, or notes to the statement of financial position that 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 surpluses, and maturity date relating to surpluses:
 - (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 statement of financial position referred to in clause 24, or notes to that statement of financial position that are set out in the registered prospectus, must state the amount of any provision for deferred taxation.

27 Non-current liabilities

Each statement of financial position referred to in clause 24, or notes to that statement of financial position that are set out in the registered prospectus, must state the following matters:

- (a) The amount of non-current liabilities:

- (b) The amount of non-current liabilities owing to managers and promoters of the scheme and the rate or rates of interest payable in respect of the non-current liabilities:
- (c) An analysis of the non-current liabilities by maturity, showing in respect of each financial year in which non-current 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 non-current liabilities that are secured and a brief description of the nature of the security.

28 Current liabilities

Each statement of financial position referred to in clause 24, or notes to that balance sheet that are set out in the registered prospectus, must state the following matters:

- (a) The aggregate amount of current liabilities:
- (b) In addition (as separate items), such of the following amounts included in that aggregate amount as are material:
 - (i) The total of trade creditors:
 - (ii) The total of banks loans and overdraft:
 - (iii) The total of provisions for taxation:
 - (iv) The total of distributions payable:
 - (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 statement of financial position referred to in clause 24, or notes to that statement of financial position that 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 statement of financial position):
- (c) A brief description of any material contingent liabilities, and the estimated amount of any material contingent liabilities.

30 Fixed assets

Each statement of financial position referred to in clause 24, or notes to that statement of financial position that 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 name and qualification of the valuer and date of valuation, if any, the aggregate amount on each basis, and accumulated depreciation shown as a deduction from each aggregate amount:
 - (i) Land:
 - (ii) 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.

31 Investments

Each statement of financial position referred to in clause 24, or notes to that statement of financial position that 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 statement of financial position referred to in clause 24, or notes to that statement of financial position that 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 amount of trade receivables (showing as separate deductions from those receivables any provisions for interest not yet earned 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); and
- (c) In respect of the trade receivables referred to in subparagraph (iii) of paragraph (b), the amounts of trade receivables owing from managers and promoters.

33 Intangible and other assets

Each statement of financial position referred to in clause 24, or notes to that statement of financial position that 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; and
- (c) The aggregate of all assets not specified in any provision of clauses 30 to 32 or of paragraph (a) or paragraph (b); and
- (d) In addition (as separate items), the nature and amount of each material asset included in the aggregate stated pursuant to paragraph (c).

34 Statements of financial performance

- (1) An audited statement of financial performance 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 statement of financial position contained or referred to 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 statement of financial performance required by this clause; or

- (b) In notes to any such statement of financial performance that are set out in the registered prospectus.

35 Contents of statement of financial performance

Each statement of financial performance referred to in clause 34, or notes to that statement of financial performance that are set out in the registered prospectus, must state the following matters:

- (a) Total gross operating revenues (and the basis of calculation of total operating revenues):
- (b) The amount of investment revenue:
- (c) The amount of audit fees and expenses:
- (d) The amount of the 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) 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 scheme:
- (i) If material, the amount of any foreign exchange gains or losses recognised in the statement of financial performance distinguishing between realised and unrealised gains or losses:
- (j) The net surplus or deficit 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 surplus or deficit referred to in paragraph (j) were taxed at the standard rate applicable to companies:
- (l) The net surplus or deficit 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 surplus or deficit after taking account of taxation and of the matters specified in paragraph (m):
- (o) The amount of any expenditure on repairs and maintenance:
- (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 statement of financial performance contained or referred to 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 statement of financial performance relating to the most recently completed accounting period of the scheme, comparative figures for the preceding accounting period:
- (b) In the case of a statement of financial position 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 statement of financial position, 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 any material contract, may, on payment of any fee, be inspected by a person who so requests.

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 or in the financial statements referred to in the registered prospectus pursuant to clause 23(2) 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 statement of financial position contained or referred to 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—
 - (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) that the auditor has with, or any interests that 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 prospective financial information, the auditor's report must contain a statement in the following form:
- “In our opinion, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made or adopted by the issuer set out at pp ... of this prospectus and is presented on a basis consistent with the accounting policies normally adopted by the company (entity).”
- (3) If financial statements are referred to in a registered prospectus pursuant to clause 23(2), a report under this clause is not required to contain information of the kinds referred to in paragraphs (a) to (f) of subclause (1) to the extent that that information is contained in a report by a qualified auditor that is registered under the Financial Reporting Act 1993.
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**Schedule 3
Notices revoked**

CI 11

Notice	Statutory Regulations Serial Number
Securities Act (Retirement Villages—Minimum Amount Payable on Application) Exemption Notice 1997	1997/201
Securities Act (Retirement Villages) Exemption Notice 1998	1998/187
Securities Act (Retirement Villages) Exemption Amendment Notice (No 4) 1998	1998/360
Securities Act (Retirement Villages) Exemption Amendment Notice 1999	1999/8

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 the close of 30 September 2003.

This notice is a class exemption from certain requirements of the Securities Act 1978 and Securities Regulations 1983 for issuers of debt and participatory securities in connection with retirement villages.

This notice follows the approach taken in the Securities Act (Retirement Villages) Exemption Notice 1998, which treats certain debt securities in respect of retirement villages as if they were participatory securities, and also treats certain participatory securities in respect of retirement villages as if they were debt securities.

Schedule 1 of the notice specifies the additional provisions that must be contained in deeds of supervision.

Schedule 2 specifies the matters that must be contained in the registered prospectus.

Schedule 3 sets out the notices that will be revoked on 1 July 1999. Until that date, the class exemption in this notice will not apply to the specified securities that are already covered by the Securities Act (Retirement Villages) Exemption Notice 1998.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 28 January 1999.

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Notes

1 General

This is an eprint of the Securities Act (Retirement Villages) Exemption Notice 1999. It incorporates all the amendments to the Securities Act (Retirement Villages) Exemption Notice 1999 as at 1 February 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)
