



Securities Act (Loan and Building Society) Exemption Notice 2005

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).

Contents

1	Title	5	Exemption from regulation 3(3) of Regulations
2	Commencement	6	Conditions of exemption
3	Expiry		
4	Interpretation		

Notice

1 Title

This notice is the Securities Act (Loan and Building Society) Exemption Notice 2005.

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 August 2010.

4 Interpretation

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

Act means the Securities Act 1978

Regulations means the Securities Regulations 1983

rights prospectus means a registered prospectus issued by the society that relates only to an offer of specified participatory securities made by the society to persons who

already hold specified participatory securities of the society, whether or not the offer is renounceable in favour of any other person

society means the Loan and Building Society

specified date, in relation to a prospectus, means the date the prospectus is delivered in registrable form to the Registrar for registration under section 42 of the Act

specified participatory securities means shares issued or to be issued by the society under section 11 of the Building Societies Act 1965 that—

- (a) carry the right to payment of a dividend from the annual surplus or accumulated reserves of the society; and
 - (b) are irredeemable or redeemable only at the option of the society; and
 - (c) entitle the holders to participate in the assets of the society on liquidation after the payment of all other liabilities of the society.
- (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(3) of Regulations

The society and every person acting on its behalf are exempted from regulation 3(3) of the Regulations in respect of a rights prospectus.

6 Conditions of exemption

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

- (a) a copy of the most recent annual financial statements of the society laid before the society at its annual general meeting in accordance with section 91(2) of the Building Societies Act 1965, and a copy of all reports required by that Act to be annexed or attached to those financial statements,—
 - (i) have previously been given or sent to the persons who were, at the time those financial statements were given or sent, holders of specified participatory securities; or

- (ii) are attached to every rights prospectus given or sent to any person under the Act; and
- (b) all of the following matters are stated or contained in every rights prospectus:
 - (i) the matters specified in clauses 1, 9, 19(1), and 21 of Schedule 1 of the Regulations as if the specified participatory securities were equity securities;
 - (ii) the date of the statement of financial position included in the financial statements referred to in paragraph (a);
 - (iii) the place or places where copies of the financial statements and reports referred to in paragraph (a) can be obtained free of charge by any person to whom an offer of specified participatory securities is made; and
- (c) every rights prospectus contains a statement by the directors of the society as to whether, after due inquiry by them in relation to the period between the date referred to in paragraph (b)(ii) and the specified date, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (i) the trading or profitability of the society; or
 - (ii) the value of its assets; or
 - (iii) the ability of the society to pay its liabilities due within the next 12 months.

Dated at Wellington this 9th day of September 2005.

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

[L.S.]

J. Diplock,
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 August 2010.

The notice exempts, subject to conditions, the Loan and Building Society (the **society**) from regulation 3(3) of the Securities Regulations 1983 in respect of a registered prospectus that relates only to an offer of building society shares by the society to members who already hold shares in the society.

The Securities Commission considers that it is appropriate to grant the exemption for the following reasons:

- building society shares are participatory securities in terms of the Securities Act 1978. However, some of those shares have the characteristics of equity securities. The Commission has recognised this in the Securities Act (Building Societies) Exemption Notice 2002, which allows a prospectus for building society shares to contain the information usually required in a prospectus for equity securities:
- it is consistent with the policy of the Securities Act (Building Societies) Exemption Notice 2002 to allow a building society undertaking a rights offer to use a short form prospectus, as could a company. The exemption achieves that, with conditions requiring investors to be given disclosure equivalent to that provided to company shareholders in a rights offer.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 15 September 2005.

This notice is administered by the Securities Commission.
