



## Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2004

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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### Notice

#### 1 Title

This notice is the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2004.

#### 2 Commencement

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

#### 3 Expiry

This notice expires on the close of 30 September 2009.

#### 4 Interpretation

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

**Act** means the Securities Act 1978

**authorised corporate director**, in relation to an investment company, means the authorised corporate director of the company as defined by the relevant rules and guidelines of the FSA

**authorised unit trust** means a unit trust scheme that has been authorised by the FSA under the FSMA

**collective investment scheme** means an authorised unit trust or an investment company, as the case may be

**depository** has the same meaning as in the Open-Ended Investment Companies Regulations 2001 (UK)

**FSA** means the United Kingdom Financial Services Authority

**FSMA** means the Financial Services and Markets Act 2000 (UK)

**investment company** means an open-ended investment company that has been authorised by the FSA under the FSMA and the Open-Ended Investment Companies Regulations 2001 (UK)

**key features document** means a document containing information about the specified securities that complies with the requirements of the FSA for key features documents

**manager**, in relation to an authorised unit trust, means a body corporate that is the manager of the authorised unit trust

**overseas prospectus** means a document that—

- (a) contains or refers to an offer of specified securities; and
- (b) other than as authorised or required by this notice, is identical to a document that has been sent to the FSA in accordance with the FSA's requirements, and by means of which it is lawful to offer the specified securities to the public in the United Kingdom; and
- (c) contains no statement referring to a listing or intended listing on a securities market operated by New Zealand Exchange Limited, other than a statement that has been approved by New Zealand Exchange Limited

**Regulations** means the Securities Regulations 1983

**specified equity securities** means shares in the share capital of an investment company

**specified participatory securities** means participatory securities in an authorised unit trust

**specified person** means,—

- (a) in respect of specified equity securities, the authorised corporate director and the investment company; and
- (b) in respect of specified participatory securities, the manager

**specified securities** means specified equity securities or specified participatory securities, as the case may be

**subfund**, in relation to a collective investment scheme, means a part of the collective investment scheme property that is held separately

**trustee**, in relation to an authorised unit trust, means a body corporate that is the trustee of the authorised unit trust

**umbrella scheme** means an investment company or an authorised unit trust—

- (a) whose instrument of incorporation or trust deed, as the case may be, provides for subfunds and the pooling, in relation to each subfund, of participants' contributions and the profits or income out of which payments are to be made; and
- (b) whose participants are entitled to exchange rights in one subfund for rights in another.

- (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 Exemptions

- (1) Every specified person and every person acting on the specified person's behalf are exempted, in respect of specified securities of which the specified person is the issuer, from—
  - (a) in the case of specified participatory securities, section 33(3) of the Act; and
  - (b) section 37 of the Act; and
  - (c) section 37A(1)(a) of the Act; and
  - (d) section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and
  - (e) sections 51 to 54 of the Act; and

- (f) section 38(a) of the Act to the extent that it requires an overseas prospectus or key features document to refer to an investment statement.
- (2) Subclause (1)(d) applies in respect of an overseas prospectus or key features document only, and not in respect of an investment statement or other advertisement.

## **6 Key features document**

- (1) The exemption in clause 5(1)(c), in respect of any specified securities offered in New Zealand for subscription, is subject to the condition that no allotment of the specified securities is made if the subscriber has not received, before subscribing for those securities, a key features document relating to those securities.
- (2) The exemptions in clause 5(1)(a), (b), and (d) are subject to the condition that any investment statement that relates to the specified securities complies with the provisions of the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to “registered prospectus” were references to the overseas prospectus.

## **7 Overseas prospectus**

The exemptions in clause 5(1)(a) to (d) are subject to the conditions that—

- (a) there is an overseas prospectus relating to the specified securities at the time that offers of those securities are made or are open for acceptance in New Zealand in reliance on those exemptions; and
- (b) it is a term of each offer of the specified securities made in New Zealand that a specified person will, within 5 working days of receiving a request from an offeree for a copy of the overseas prospectus relating to the securities concerned, without fee, send, or cause to be sent, to that offeree—
  - (i) a copy of the overseas prospectus; and
  - (ii) a copy of the most recent annual report and (if more recent) the most recent half-yearly report of the collective investment scheme; and
  - (iii) copies of any documents that must accompany a copy of the overseas prospectus sent to a person

in Great Britain in accordance with the law of England and Wales, or the law of Scotland, as the case may be.

## **8 Documents to be received by Registrar of Companies**

- (1) The exemptions in clause 5(1)(a) to (d) are subject to the further conditions that—
- (a) before the first offer of any specified securities in a collective investment scheme is made or open for acceptance in New Zealand in reliance on any exemption in clause 5(1), a copy of each of the following documents relating to that scheme has been received by the Registrar of Companies:
    - (i) the overseas prospectus relating to the specified securities;
    - (ii) a copy of any exemption, order, or declaration (other than the exemptions granted by this notice) that has been granted by a competent authority in respect of the specified securities;
    - (iii) a certificate by a specified person certifying that a copy of the overseas prospectus has been sent to the FSA in accordance with the FSA's requirements;
    - (iv) any document issued by the FSA evidencing that the manager and trustee of the authorised unit trust, or the authorised corporate director and depository of the investment company, as the case may be, have been authorised by the FSA under the FSMA;
    - (v) in the case of specified equity securities,—
      - (A) the instrument of incorporation of the investment company; and
      - (B) the authorisation order made by the FSA in respect of the investment company;
    - (vi) in the case of specified participatory securities,—
      - (A) the trust deed of the authorised unit trust; and
      - (B) the authorisation order made by the FSA in respect of the authorised unit trust;

- (vii) any documents that amend or supplement any of the documents referred to in subparagraphs (i) to (vi) in existence at the time the first offer of specified securities in the collective investment scheme is made or open for acceptance in New Zealand in reliance on any exemption in clause 5(1); and
  - (b) a copy of any document that amends, supplements, or replaces the overseas prospectus relating to the specified securities (other than a document in relation to which a copy must be received under paragraph (a)(vii)) has been received by the Registrar of Companies before any allotment of specified securities is made in New Zealand after the amendment, supplement, or replacement takes effect; and
  - (c) the only material differences (if any) between the overseas prospectus that is used in New Zealand and the equivalent document that is used in Great Britain relate to 1 or more of the following matters:
    - (i) the inclusion in the overseas prospectus that is used in New Zealand of the statements and information that are required by this notice to be contained in, or to accompany, that document;
    - (ii) the exclusion from the overseas prospectus that is used in New Zealand of statements or information in connection with interests in collective investment schemes not offered in New Zealand;
    - (iii) the exclusion from the overseas prospectus that is used in New Zealand of statements or information in connection with securities not offered in New Zealand.
- (2) The exemptions in clause 5(1)(a) and (c) are subject to the further condition that a copy of any document that amends or replaces any of the documents referred to in subclause (1)(a)(ii) to (vi) (other than a document in relation to which a copy must be received under subclause (1)(a)(vii)) has been received by the Registrar of Companies within 5 working days of—
- (a) the date on which the document is sent to the FSA; or

- (b) if the document is not sent to the FSA, but is received by the authorised corporate director, the manager, or the investment company from the FSA, the date that the document is received by the authorised corporate director, the manager, or the investment company; or
  - (c) in the case of any other document that is not sent to the FSA, the date of the document.
- (3) The conditions in subclauses (1) and (2) do not apply, in respect of a document, to the offer of any security that is made after a copy of that document has been received by the Registrar of Companies.

## **9 Information for New Zealand investors**

- (1) The exemptions in clause 5(1)(a) to (d) are subject to the further condition that a document that complies with subclause (2) is contained in or accompanies—
  - (a) every overseas prospectus or key features document that is deposited with the Registrar of Companies or provided to any person to whom an offer of specified securities is made in New Zealand; and
  - (b) every investment statement that relates to specified securities.
- (2) That document must—
  - (a) include information or statements to the following effect, under the heading “Important Information for New Zealand Investors”:
    - (i) that the issue or sale of the specified securities will be conducted in the manner specified in the overseas prospectus and in the manner prescribed by the law of England and Wales, or the law of Scotland, as the case may be; and
    - (ii) information describing how returns to New Zealand investors are likely to be affected by New Zealand taxation rules and how, as a result, any forecast or projected returns may differ from the returns for Great Britain investors described in the overseas prospectus; and

- (iii) that, despite the information provided under subparagraph (ii), investors should satisfy themselves as to the tax implications of investing in the specified securities; and
- (iv) that investing in the specified securities may carry with it a currency exchange risk; and
- (v) that the financial reporting requirements applying in New Zealand and those applying in respect of the collective investment scheme may be different and the financial statements of the collective investment scheme may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
- (vi) that a copy of the overseas prospectus relating to the specified securities, a copy of the most recent annual report, and (if more recent) the most recent half-yearly report of the collective investment scheme is available from a specified person on request; and
- (vii) a list of the types of documents relating to the collective investment scheme that have been received by the Registrar of Companies in accordance with this notice and a statement that those documents can be inspected at the office of the Registrar of Companies and can be obtained from the manager or authorised corporate director; and
- (viii) that, although a copy of the overseas prospectus and other documents have been deposited with the Registrar of Companies, the overseas prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and
- (ix) if a key features document is provided in New Zealand, that the key features document that is provided to persons to whom offers of the specified securities are made in New Zealand is intended to provide key information about the investment, but is not an investment statement and may not be comparable to an investment statement in all respects and may not contain all



- the information required to be contained in an investment statement; and
- (x) in the case of specified participatory securities, the names and addresses of the manager and the trustee of the authorised unit trust and a statement that the authorised unit trust, the manager, and the trustee may not be subject in all respects to New Zealand law; and
  - (xi) in the case of specified equity securities, the names and addresses of the authorised corporate director and the depositary of the investment company and a statement that the investment company, the authorised corporate director, and the depositary may not be subject in all respects to New Zealand law; and
  - (xii) in relation to an overseas prospectus or key features document only, a statement in the form set out in the Schedule; and
- (b) include information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
- (i) that, in respect of a dispute concerning the contract for the specified securities, the manager (in the case of specified participatory securities) or the investment company and the authorised corporate director (in the case of specified equity securities)—
    - (A) agrees or agree to submit to the non-exclusive jurisdiction of the New Zealand courts; and
    - (B) has or have instructed the New Zealand agent for service referred to in subparagraph (ii) to accept service of documents on its or their behalf; and
    - (C) agrees or agree that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and
  - (ii) the name and address of a person in New Zealand who has been appointed by the manager, or the investment company and authorised corporate

- director, as the case may be, to accept service in New Zealand of any documents on its behalf; and
- (iii) that, despite the statements referred to in subparagraph (i), the contract in respect of the specified securities may not always be enforceable in New Zealand courts.

- (3) The conditions in subclauses (1) and (2) are not breached if there are differences between the information or statements required under those subclauses to be in the document that is contained in or accompanies an overseas prospectus, key features document, or investment statement and the information or statements presented in that document, but the differences are immaterial.

## **10 Offers to be made in Great Britain at same time**

The exemptions in clause 5(1)(a) to (d) are subject to the further condition that, at the same time as offers of the specified securities are made or are open for acceptance in New Zealand, the specified securities are marketed by the specified person for issue or sale in Great Britain in accordance with the law of England and Wales, or the law of Scotland, as the case may be.

## **11 Annual report to Commission**

The exemptions in clause 5(1)(a), (d), and (e), in respect of specified securities offered after 31 March in any calendar year, are subject to the further condition that, if the manager or authorised corporate director, as the case may be, has offered specified securities to the public in New Zealand during the preceding calendar year, the manager or authorised corporate director, as the case may be, has sent to the Commission a written report in respect of the preceding calendar year that—

- (a) specifies each collective investment scheme and each subfund of an umbrella scheme in respect of which the manager or authorised corporate director offered specified securities during that preceding calendar year; and
- (b) specifies, in respect of each such collective investment scheme and subfund,—
  - (i) the total amount of money raised in New Zealand in that preceding calendar year by the manager or

- authorised corporate director by the offer of the specified securities; and
- (ii) the total amount of New Zealand raised funds under management by the manager or authorised corporate director as at the last day of that preceding calendar year; and
  - (c) states, in respect of each of those collective investment schemes and subfunds, whether the manager or authorised corporate director intends to continue to offer specified securities to the public in New Zealand in reliance on any exemption in clause 5.

## 12 Transitional provision

- (1) This clause applies to specified securities offered, after this notice comes into force, under a key features document, an overseas prospectus, or an investment statement that is dated before the expiry of the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999.
- (2) An offer and allotment of specified securities to which this clause applies may be made in accordance with either—
  - (a) this notice; or
  - (b) until 30 September 2005, the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999 as in force—
    - (i) on the date that the offer is made if the offer is made before the expiry of that notice; or
    - (ii) immediately before that notice expired as if that notice had not expired if the offer is made after the expiry of that notice.

cl 9(2)(a)(xii)

## Schedule

### Form of statement under heading Important Information for New Zealand Investors

#### Important Information for New Zealand Investors

(The information in this section is required under the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2004.)

The document that this statement is contained in, or is accompanied by, is not an investment statement under New Zealand law. It is a [*insert a generic description of the document*] prepared in accordance with the law of England and Wales\*/Scotland\*. There are likely to be differences between the information provided and the way that information is presented in the [*insert a generic description of the document*] as compared to an investment statement under New Zealand law.

\* *Delete if inapplicable*

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

### *Choosing an investment*

When deciding whether to invest, consider carefully the answers to the following questions:

What sort of investment is this?

Who is involved in providing it for me?

How much do I pay?

What are the charges?

What returns will I get?

What are my risks?

Can the investment be altered?

How do I cash in my investment?

Who do I contact with enquiries about my investment?

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

What other information can I obtain about this investment?

### *Choosing an investment adviser*

You have the right to request from any investment adviser a written disclosure statement stating his or her experience and qualifications to give advice. That document will tell you—

- whether the adviser gives advice only about particular types of investments; and
- whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- whether the adviser will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment adviser commits an offence if he or she does not provide you with a written disclosure statement within 5 working days of your request. You must make the request at the time the advice is given or within 1 month of receiving the advice.

In addition—

- if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- if an investment adviser receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes.

Dated at Wellington this 28th day of September 2004.

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

[L.S.]

J. Diplock,  
Chairperson.

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### Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2009. It replaces, in an amended form, the exemptions granted by the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999 (the **1999 notice**).

The notice continues to exempt managers of authorised unit trusts and open-ended investment companies established under the law of England and Wales, or the law of Scotland, subject to conditions, from the following provisions of the Securities Act 1978 and the Securities Regulations 1983:

- section 37, which prohibits the allotment of securities offered to the public unless there is a registered prospectus relating to the securities:
- section 37A(1)(a), which prohibits the allotment of securities offered to the public unless subscribers receive an investment statement relating to the securities prior to subscription:
- sections 38(a) and 38A, and regulations 11 to 18, and 21 to 23, which contain requirements as to the content of advertisements and registered prospectuses:
- sections 51 to 54, which relate to the keeping of registers and accounting records, and the sending of certificates to securities holders.

Managers of authorised unit trusts are also exempted from section 33(3), which requires the appointment of a statutory supervisor, and a deed of participation, in relation to participatory securities.

This notice makes significant changes to the conditions in the 1999 notice with regard to the conditions relating to the provision of documents to the Registrar of Companies and the information that must be provided to New Zealand investors.

The Securities Commission considers that it is appropriate to grant a renewal of the exemptions granted in the 1999 notice because—

- the exemptions remain useful and relevant to Great Britain issuers and there is continued reliance on the exemptions; and
- the requirements for Great Britain issuers under this notice should be aligned, to the extent appropriate and relevant, to the requirements for Australian issuers under the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003. The amendments to the 1999 notice achieve this, in particular, in relation to the requirements to file certain documents about the Great Britain issuer and the scheme with the New Zealand Registrar of Companies, and to provide New Zealand investors with additional information and warning statements about the differences between investing in New Zealand and investing in Great Britain.

A 1-year transitional period is required for securities offered after this notice comes into force using Great Britain disclosure documents that are dated prior to the expiry of the 1999 notice, as offers are being made on an ongoing basis.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 30 September 2004.  
This notice is administered by the Securities Commission.

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