



Securities Act (Robert Brown Developments (Napier) Limited) Exemption Notice 2002

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

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Notice

- 1 Title**
This notice is the Securities Act (Robert Brown Developments (Napier) Limited) Exemption Notice 2002.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 31 May 2007.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
 - Act** means the Securities Act 1978
 - certificate of title** means a certificate of title issued under the Unit Titles Act 1972

generally accepted accounting practice has the meaning given to that term by section 3 of the Financial Reporting Act 1993

proportionate ownership scheme means a contributory scheme offered by Robert Brown Ltd that involves the investment of money in such circumstances that—

- (a) each subscriber of specified participatory securities in the scheme will acquire an interest in a portion of the real property, whether freehold or leasehold, through the issue of a certificate of title; and
- (b) each interest acquired under the scheme by a subscriber of specified participatory securities will comprise a portion of the whole of the real property

real property means any estate or interest in land that is capable of registration under the Unit Titles Act 1972

registered valuer means a person who is a registered valuer within the meaning of the Valuers Act 1948

Regulations means the Securities Regulations 1983

Robert Brown Ltd means Robert Brown Developments (Napier) Limited

specified participatory security means a participatory security issued by Robert Brown Ltd in respect of the proportionate ownership scheme.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
 - (a) that registered valuer and any director of Robert Brown Ltd are relatives, one being the spouse of the other or being the parent, brother, sister, or child of the other or of the spouse of the other; or
 - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
 - (i) a member, shareholder, or director of Robert Brown Ltd; or
 - (ii) a member, shareholder, or director of any company that is a holding company or a subsidiary of Robert Brown Ltd or that is a partner or joint venturer with Robert Brown Ltd; or

- (c) there is any other relationship or interest between the registered valuer and Robert Brown Ltd that is likely to influence the judgment of the registered valuer.
- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

- (1) Robert Brown Ltd and every person acting on behalf of Robert Brown Ltd are exempted from sections 33(3), 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.
- (2) The exemption granted by subclause (1) is subject to the following terms and conditions:
 - (a) that it is a term of the contract entered into between the subscriber of the specified participatory securities and Robert Brown Ltd for the subscription and allotment of the specified participatory securities that, upon the acquisition of the real property in accordance with the proportionate ownership scheme, the subscriber of the specified participatory securities will be issued with a certificate of title in respect of the subscriber's interest in the real property:
 - (b) that no subscriptions for the specified participatory securities will be received by, or on behalf of, Robert Brown Ltd unless the contract referred to in paragraph (a) has been entered into:
 - (c) that all subscriptions for the specified participatory securities and any interest on those subscriptions are held in trust in a trust account until—
 - (i) registrable title to the real property is obtained, for the purposes of the proportionate ownership scheme, by each subscriber of specified participatory securities or is obtained on behalf of each subscriber by Robert Brown Ltd; and
 - (ii) the satisfaction of any other conditions relating to the receipt of subscriptions by Robert Brown Ltd contained in the contract referred to in paragraph (a):

- (d) that the trust account referred to in paragraph (c) is maintained by a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998 and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies:
 - (e) that every subscriber of specified participatory securities has, before entering into the contract referred to in paragraph (a), been provided with a written statement signed by the directors of Robert Brown Ltd and dated not more than 2 months prior to the subscriber's receipt of the written statement and that sets out the matters referred to in Schedule 1:
 - (f) that Robert Brown Ltd's written statement contains or has attached a copy of a report by an independent registered valuer that is signed by the registered valuer and dated not more than 5 months prior to the date of Robert Brown Ltd's written statement and that sets out the matters referred to in Schedule 2:
 - (g) that every subscriber of specified participatory securities is to be provided annually with audited annual financial statements in respect of the performance, financial position, and cash flows of the proportionate ownership scheme no later than 3 months after the balance date of the proportionate ownership scheme.
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Schedule 1

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Matters to be specified or contained in Robert Brown Ltd's statement

1 Date of Robert Brown Ltd's statement

In a prominent place, the date as at which Robert Brown Ltd's statement is prepared.

Important information for investors

2 Information at front of Robert Brown Ltd's statement

A statement in the following form (to be set out at the front of Robert Brown Ltd's statement):

“IMPORTANT INFORMATION

(The information in this section is required under the Securities Act 1978.)

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

Warning

This offer is exempt under the Securities Act (Robert Brown Developments (Napier) Limited) Exemption Notice 2002 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.

Choosing an investment

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

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—

- (a) whether the adviser gives advice only about particular types of investments; and
- (b) whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- (c) 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,—

- (a) if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- (b) 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.”

What sort of investment is this?

3 Description of proportionate ownership scheme

A description of the proportionate ownership scheme, the interests in the proportionate ownership scheme being offered, and how long the scheme has been in operation.

4 Description of real property

A description of the real property to be purchased by the subscribers for the purposes of the proportionate ownership scheme.

5 Material contracts relating to improvements to real property

Material details of the contracts relating to the building or improvements if—

- (a) it is proposed to construct a building on the real property; or
- (b) at the date of Robert Brown Ltd's statement, a building is in the course of construction on the real property; or
- (c) it is proposed to make other improvements to the real property.

6 Covenants, etc, in respect of real property

A description of any covenants, conditions, restrictions, and easements in respect of the real property, whether or not registered on the certificate of title in respect of the real property.

7 Land information memorandum relating to real property

Whether any matters referred to in a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 have been referred to the independent registered valuer for the purposes of the valuation report referred to in clause 5(2)(f) of the notice, and a description of those matters.

8 Options, etc, in respect of real property

A description of any option, buyback, or similar arrangement, and any rental guarantees in relation to the real property.

9 Material details concerning rights of occupation of real property

- (1) Material details concerning any rights of occupation to which the real property is subject, whether by lease, licence, or otherwise, including—

- (a) the term of the agreement; and
 - (b) any rights of renewal; and
 - (c) any rent reviews; and
 - (d) the financial standing of tenants or occupiers; and
 - (e) any guarantees or other special provisions.
- (2) A statement—
- (a) of the place where copies of any agreement relating to such rights of occupation may be inspected free of charge; and
 - (b) whether any existing occupant of the real property has failed to meet any material obligations under the terms of any agreement conferring a right of occupation.

Who is involved in providing it for me?

10 Information about persons associated with proportionate ownership scheme

The names and addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) Robert Brown Ltd and its directors;
- (b) the manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme;
- (c) the person referred to in clause 5(2)(d) of the notice;
- (d) the sales organisation (if any) through which the offer of specified participatory securities is made to the subscriber;
- (e) the names and addresses of any promoters.

11 Qualifications and experience of manager of proportionate ownership scheme

The qualifications and experience of the manager of the proportionate ownership scheme.

12 Management agreements relating to real property

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the real property, including—
- (a) the term of the agreement; and

- (b) the management fee; and
 - (c) the procedures for making decisions that may affect the interests of subscribers of specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

13 Interests of Robert Brown Ltd, manager, promoter, and others

If Robert Brown Ltd, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of Robert Brown Ltd or manager or promoter—

- (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
- (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
- (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
- (d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
- (e) is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the real property,—

the following information:

- (f) the names of the parties to the transaction and the date of the transaction; and
- (g) a brief description of the material terms of the transaction; and
- (h) the nature of the interest in the transaction.

How much do I pay?

14 Purchase price

The purchase price to be paid by subscribers for the real property.

What are the charges?

15 Types of charges

- (1) A statement as to which of the following types of charges are or may be payable to Robert Brown Ltd or a promoter, or an associated person of Robert Brown Ltd or a promoter, or the proportionate ownership scheme, by a subscriber (whether directly or indirectly, including by deduction):
 - (a) entry charges:
 - (b) trustee, administration, or management charges:
 - (c) expenses or overhead charges:
 - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
 - (e) early termination charges:
 - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
 - (g) alteration charges:
 - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by Robert Brown Ltd or from the scheme to a promoter or administration manager or investment manager, or an associated person of Robert Brown Ltd or the promoter or the administration manager or the investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of Robert Brown Ltd or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of Robert Brown Ltd or any other person to alter any of the charges applicable to the specified participatory securities.

16 Amount of charges

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) can, at the date of Robert Brown Ltd's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) cannot, at the date of Robert Brown Ltd's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

17 Remuneration of Robert Brown Ltd relating to proportionate ownership scheme

The remuneration and other benefits Robert Brown Ltd will receive for establishing and promoting the proportionate ownership scheme and the manner in which this remuneration and other benefits are to be paid or provided.

What returns will I get?

18 Income and expenses relating to proportionate ownership scheme

Material details concerning the manner in which all income and expenses relating to the proportionate ownership scheme are to be accounted for and the basis upon which profits are to be distributed.

19 Financial information in respect of real property

To the extent that it is in the possession or control of Robert Brown Ltd or that it can reasonably be obtained by Robert Brown Ltd, the following financial information in respect of the real property that is the subject of the proportionate ownership scheme:

- (a) a statement of income and expenditure for a financial year ending not more than 5 months before the date of

Robert Brown Ltd's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the Institute of Chartered Accountants of New Zealand; and

- (b) a statement of cash flows for a financial year ending not more than 5 months before the date of Robert Brown Ltd's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the Institute of Chartered Accountants of New Zealand.

20 **Forecast financial statements**

If Robert Brown Ltd's statement contains forecast financial information in respect of the proportionate ownership scheme, forecast financial statements in respect of the scheme for the first accounting period of 1 year commencing on or after the date of Robert Brown Ltd's statement that—

- (a) comprise statements of financial position, financial performance, and cash flows; and
- (b) accord with generally accepted accounting practice; and
- (c) have been reviewed by a member of the Institute of Chartered Accountants of New Zealand.

What are my risks?

21 **Liabilities relating to proportionate ownership scheme**

A description and, where practicable, quantification of all liabilities (including contingent liabilities) that a subscriber of specified participatory securities will or may incur as a holder of the specified participatory securities.

Can the investment be altered?

22 **Alteration of securities**

A brief description of any right of a subscriber, Robert Brown Ltd, or any other person to alter the terms of a subscriber's interest in the proportionate ownership scheme.

How do I cash in my investment?

23 Early termination

A brief description of any right of Robert Brown Ltd, a subscriber, or any other person to terminate a subscriber's interest in the proportionate ownership scheme.

24 Right to sell a security

- (1) A statement as to whether or not a subscriber is entitled to sell his or her interest in the proportionate ownership scheme to another person and, if so, whether in the opinion of Robert Brown Ltd there is an established market for such sales.
- (2) If any charges are payable by a subscriber on any such sale, a brief description of those charges.

Who do I contact with enquiries about my investment?

25 Enquiries about the scheme

The names or descriptions of officers, employees, or agents of Robert Brown Ltd to whom enquiries about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.

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

26 Complaints about the scheme

- (1) The names or descriptions of officers, employees, or agents of Robert Brown Ltd to whom complaints about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the proportionate ownership scheme can be made to a trustee or an industry body, a statement to this effect and the addresses and business telephone numbers of those people.
- (3) A statement whether complaints about the proportionate ownership scheme can be made to an ombudsman and, if so, the address and business telephone number of the ombudsman.

What other information can I obtain about this investment?

27 Annual information

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by Robert Brown Ltd.

28 On request information

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from Robert Brown Ltd; and
- (b) explaining how such a request should be made; and
- (c) whether any charge may be made for such information and the amount of the charge.

Other information

29 Other material information

Any other information that would be material to a prospective subscriber's decision to invest in the scheme.

Schedule 2

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Matters to be specified in independent registered valuer's report**1 Name and address of valuer**

The name and address of the registered valuer and a brief description of that registered valuer's qualifications.

2 Statement by registered valuer

A statement that the valuation report is made by the registered valuer as an independent registered valuer.

3 Purpose of report

A statement that the registered valuer is making the valuation report for the purposes of the proportionate ownership scheme and for use by prospective subscribers of specified participatory securities.

4 Description of real property

A description of the real property that is the subject of the proportionate ownership scheme, and, if new buildings and improvements are proposed in respect of the real property, confirmation that the plans and specifications have been inspected by the registered valuer.

5 Covenants, etc, in respect of real property

A list of any covenants, conditions, restrictions, easements, and any other estates or interests appearing on the certificate of title in respect of the real property as at the date of the independent registered valuer's report.

6 Present use of real property

The present use of the real property.

7 Compliance with regional or district plan rules

- (1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the real property.
- (2) Whether the intended use of the real property for the purposes of the proportionate ownership scheme complies with the

rules, rights, consents, or other statutory requirements referred to in subclause (1).

8 Government valuation of real property

The value of the real property as shown on the most recent Government valuation of the real property and the date of that valuation.

9 Leasehold interests or tenancy arrangements in respect of real property

- (1) Current rental payable, and a statement whether that rental is being paid, in respect of any existing leasehold interest in the real property or any existing tenancy arrangement relating to the real property.
- (2) Other material matters concerning any such leasehold interests or tenancy arrangements.

10 Registered valuer's opinion as to value of real property

The opinion of the registered valuer as to the value of the real property free of charges.

11 Basis of valuation

The basis upon which the registered valuer's valuation of the real property is made and any assumptions used in making the valuation, including any matters referred to the valuer under clause 7 of Schedule 1.

12 Income from real property

The amount of income that the real property can reasonably be expected to produce on an annual basis under conditions prevailing at the date of the registered valuer's report.

13 Other material matters relating to real property

Any other matters concerning the real property that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

14 Consent to distribution of report

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective subscribers of specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 29th day of May 2002.

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

[L.S.]

F. R. S. Clouston,
Member.

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 31 May 2007.

This notice applies to offers by Robert Brown Developments (Napier) Limited of participatory securities in a contributory scheme for ownership interests in real property.

The notice exempts such offers, subject to conditions, from the prospectus and investment statement requirements and various other requirements of the Securities Act 1978.

These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 of the notice and with a report by a registered valuer that contains the information specified in Schedule 2 of the notice.

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

Date of notification in *Gazette*: 30 May 2002.

This notice is administered in the Securities Commission.
