



Securities Act (Parua Bay Marina) 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).

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Notice

1 Title

This notice is the Securities Act (Parua Bay Marina) 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 30 April 2008.

4 Interpretation

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

Act means the Securities Act 1978

company means Parua Bay Marina Management Limited

marina berth means a marina berth that is to be constructed as part of the scheme

Regulations means the Securities Regulations 1983

reporting date, in relation to a financial year, means the date that is 3 months after the end of that financial year

scheme means the scheme for ownership of rights and interests in the marina situated at Whangarei Heads Road, Parua Bay, Whangarei, and known as the Parua Bay Marina

specified participatory securities means participatory securities issued by the company and the trustee in respect of the scheme

trustee means Parua Bay Marina Trustee Company Limited.

- (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

The company and the trustee, and every person acting on behalf of either or both of them, are exempted, in the case of specified participatory securities, from—

- (a) section 37(2) of the Act; and
- (b) section 37A(1)(c) of the Act; and
- (c) clauses 7(2) to (6) of Schedule 3 of the Regulations.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that—
- (a) no allotment of the specified participatory securities is made if the date of allotment would be more than 30 months after the date that the first registered prospectus relating to the specified participatory securities is delivered in registrable form to the Registrar for registration under section 42 of the Act; and
 - (b) each payment made on account of the purchase price for rights and interests in a marina berth (other than a payment payable on allotment of the specified participatory securities), and any interest earned on the payment, is held in trust in 1 or more trust accounts until—

- (i) the subscriber receives an executed marina berth licence in respect of the subscriber's marina berth; and
 - (ii) the satisfaction, or waiver on terms that are disclosed in the investment statement and registered prospectus, of any other condition that relates to the receipt by the trustee of the purchase price for rights and interests in the marina berth; and
 - (c) the trust accounts referred to in paragraph (b) are audited at least annually and are maintained by the statutory supervisor for the specified participatory securities; and
 - (d) every 6 months from the commencement of construction until all of the marina berths are completed, the project manager under the construction contract for the scheme provides a certificate to each subscriber for specified participatory securities, and to the statutory supervisor for the specified participatory securities, that states, as at the date of the certificate,—
 - (i) whether or not the construction of the marina berths is within budget and on schedule, and if not, why not; and
 - (ii) based on the latest information available and the current conditions, whether or not the marina berths will be completed within budget and on schedule, and if not, why not.
- (2) Despite subclause (1)(b),—
- (a) if the contract between a subscriber for specified participatory securities and the trustee for the sale and purchase of rights and interests in a marina berth is terminated or cancelled, each payment made on account of the purchase price for those rights and interests (and any interest earned on those payments) may be paid to the person entitled to the payment (and interest) under that contract; and
 - (b) if the allotment of the specified participatory securities cannot proceed in accordance with subclause (1)(a) or clause 7, all the payments (and any interest earned on those payments) must be paid to the subscriber who made the payments.

- (3) The exemptions in clause 5 are subject to the condition that every registered prospectus that contains or accompanies an offer of specified participatory securities—
- (a) contains prominent statements to the effect that, if information or a statement in the prospectus or in any attachment to the prospectus becomes false or misleading in a material particular, the prospectus will be immediately withdrawn or amended; and
 - (b) contains prominent statements to the effect that, in respect of each financial year of the scheme,—
 - (i) audited financial statements that comply with the Financial Reporting Act 1993 will be prepared for the scheme not later than the reporting date; and
 - (ii) copies of the most recent audited financial statements for the scheme may be obtained by holders of the specified participatory securities, free of charge, on request at the place or places specified in the prospectus; and
 - (iii) every registered prospectus will be accompanied by, or have annexed to it, a copy of the most recent financial statements for the scheme; and
 - (c) specifies the fixed annual fees payable by holders of the specified participatory securities for the first financial year of the scheme following the first date of issue of specified participatory securities; and
 - (d) specifies the minimum gross value of sales of specified participatory securities required to enable the scheme to commence; and
 - (e) explains the effect of the condition in clause 7; and
 - (f) specifies that, if specified participatory securities cannot be allotted as provided in clause 7, then the trustee, or all the directors of the trustee, will repay the subscriptions, together with any interest earned on those subscriptions, within 2 months of the expiry of the time period referred to in clause 7; and
 - (g) is accompanied by a copy of the most recent financial statements for the scheme; and
 - (h) is accompanied by a copy of the most recent certificate referred to in subclause (1)(d); and

- (i) contains, or has annexed to it, or is accompanied by, a copy of the standard terms and conditions of the licence for marina berths granted in respect of the scheme.

7 Condition of exemption from section 37(2) of Act that applies if minimum gross value of sales not reached

- (1) The exemption in clause 5(a) is subject to the condition that no allotment may be made of a specified participatory security unless, within 6 months after the date of the registered prospectus,—
 - (a) subscribers for the specified participatory securities have become legally bound to pay to the trustee the amount stated in the registered prospectus as the minimum gross value of sales in accordance with clause 6(3)(d); and
 - (b) each subscriber for specified participatory securities has paid, and the trustee has received, at least 20% of the amount that the subscriber has become legally bound to pay in respect of those securities.
- (2) For the purpose of this clause,—
 - (a) a sum is deemed to have been paid to, and received by, the trustee if a cheque for that sum is received in good faith by the trustee and the directors of the trustee have no reason to suspect that the cheque will not be paid:
 - (b) the amount so stated in the registered prospectus must be reckoned exclusively of any amount payable otherwise than in cash.

8 Condition of exemption from section 37A(1)(c) of Act requiring certificates to be lodged with Registrar

The exemption in clause 5(b) is subject to the condition that the company and the trustee, during the period that the offer of the specified participatory securities remains open for subscription, lodge with the Registrar certificates that—

- (a) relate to the registered prospectus for the specified participatory securities; and
- (b) refer to Parua Bay Marina Development Limited's most recent audited financial statements, being financial statements that comply with the Financial Reporting Act 1993; and
- (c) are signed on behalf of the directors of the company by at least 2 directors of the company; and

- (d) are signed on behalf of the directors of the trustee by at least 2 directors of the trustee; and
- (e) are dated not later than 3 months after the date of the financial statements referred to in paragraph (b); and
- (f) state that, in the opinion of each of the company's and the trustee's directors after due enquiry by them, 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
- (g) state that, except to the extent permitted by this notice, the information contained in the registered prospectus complies with Schedule 3 of the Regulations.

Dated at Wellington this 18th day of October 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 30 April 2008.

The notice exempts Parua Bay Marina Management Limited and Parua Bay Marina Trustee Company Limited, subject to conditions, from certain provisions of the Securities Act 1978 and of the Securities Regulations 1983 in the case of offers of participatory securities in a scheme relating to marina berths at Whangarei Heads Road, Parua Bay, Whangarei.

The exemption, subject to conditions, enables Parua Bay Marina Management Limited and Parua Bay Marina Trustee Company Limited to—

- extend the life of the prospectus in respect of the participatory securities so that allotments made during the extended period continue to be valid; and

- extend the time within which subscriptions are required to be refunded; and
- issue the prospectus without inclusion of prospective financial information.

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

- the participatory securities on offer are not in the nature of an ongoing scheme or business operation whereby investors will expect an income stream, and as such some of the provisions of the law applying to those investments do not provide material benefit for investors, but impose costs on the issuer; and
- subscribers have the protection of their money being held in trust by the statutory supervisor until all conditions in respect of the purchase and allotment of the participatory securities are satisfied; and
- the marketing requirements of schemes such as marina promotions are longer term than for most offers of securities. This is accommodated by allowing the use of an “evergreen” prospectus; and
- the condition of exemption requiring the directors to certify periodically that the prospectus is accurate and up to date, and to withdraw it immediately if it is misleading, provides protection for prospective investors by requiring that the prospectus can be relied upon as being accurate and current; and
- the scheme is not a traditional investment scheme whereby investors will receive a financial return by way of interest, dividends, or any other form of participation in the profits of the issuer. As such, prospective financial information about the scheme would be of limited use to investors. The condition requiring disclosure of fees payable will provide more useful information for prospective investors.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 October 2005.
This notice is administered by the Securities Commission.
