



Securities Act (Feltex Carpets Limited) 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 (Feltex Carpets Limited) 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 2010.

4 Interpretation

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

Act means the Securities Act 1978

board means the board of directors of Feltex

broker means any NZX Trading and Advising Firm (as defined in Rule 1.1 of the New Zealand Exchange Limited

Participant Rules) appointed by Feltex from time to time for the purposes of the plan

dividend has the same meaning as in section 53 of the Companies Act 1993

Feltex means Feltex Carpets Limited

market price threshold means a price per specified security that is determined by the board in accordance with clause 7(2)(b)

NZSX means the securities market (as defined in the Securities Markets Act 1988) operated by New Zealand Exchange Limited and known as the NZSX or the New Zealand Stock Market

participating securities holder means a securities holder—
(a) who has elected to participate in the plan; and
(b) whose participation in the plan has not been terminated in accordance with the terms of that plan

plan means a plan under which relevant specified securities are to be sold only to securities holders

record date means the day specified by the board for determining entitlement to the relevant dividend

Regulations means the Securities Regulations 1983

relevant dividend means a dividend in respect of a specified security that is held by a securities holder and specified by that holder as a participating security in relation to the plan

relevant specified security means an equity security issued by Feltex to which this notice applies

securities holder means a person who, at 5 pm on the record date, is—

- (a) the registered holder of equity securities issued by Feltex that are the same class as the securities offered under the plan; and
- (b) a resident of a country that has not been excluded by Feltex from the application of the plan to avoid any risk of breaching the laws of that country

specified security means an equity security issued by Feltex.

- (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 Application of notice

This notice applies to specified securities that—

- (a) have been previously allotted; and
- (b) are to be sold by the broker under a plan to a securities holder in consideration for directing Feltex to pay the purchase price for the securities from all relevant dividends declared by Feltex and payable to that person.

6 Exemption from sections 37 and 37A of Act and from Regulations (except regulation 8)

Feltex, the broker, and every person acting on behalf of either or both of them are exempted from sections 37 and 37A of the Act and from the Regulations (except regulation 8) in respect of the relevant specified securities.

7 Conditions of exemption

- (1) The exemption in clause 6 is subject to the condition that, before a securities holder elects to acquire relevant specified securities, that person receives a document that contains—
 - (a) an offer of securities under the plan; and
 - (b) a description of the plan and its terms and conditions; and
 - (c) a statement that there is available from Feltex (or Feltex's share registrar), on request and free of charge, a copy of the most recent annual report and financial statements (that comply with the Financial Reporting Act 1993) of Feltex.
- (2) The exemption in clause 6 is subject to the further condition that the plan contains provisions requiring that—
 - (a) the purchase price of the relevant specified securities payable by a participating security holder is the average sale price at which the broker acquires the relevant specified securities in on-market transactions on the NZSX over a period of not more than 15 days on which the NZSX is open for trading that begins on the day after the record date; and
 - (b) the broker cannot acquire relevant specified securities in on-market transactions on the NZSX if the NZSX market price for relevant specified securities is more than a price that is to be set by the board (the **market price threshold**) by—

- (i) determining the price per specified security that is 5 per cent above the volume weighted average sale price at which specified securities of the same class were traded in on-market transactions on the NZSX over a period of 5 days on which the NZSX was open for trading before the record date; and
 - (ii) making any reasonable adjustment to allow for the dividend expectation and any unusual or exceptional circumstances that have, in the board's opinion, artificially affected the volume weighted average sale price of those specified securities in that period; and
- (c) at the time the market price threshold is set and the relevant specified securities are acquired by the broker, Feltex and the broker have no information that is not publicly available that would, or would be likely to, affect materially the price of the securities if the information were publicly available; and
- (d) every securities holder is given a reasonable opportunity to elect to participate in the plan; and
- (e) the relevant specified securities transferred to a participating securities holder under the plan have attached to them the same rights, and are transferred for the same purchase price, as securities of the same class transferred to other participating securities holders; and
- (f) if, for any reason, any participating securities holder does not receive all or any of the relevant specified securities to which that holder is entitled under the plan, Feltex will pay to the participating securities holder the difference between the portion of the relevant dividend received by the holder in the form of relevant specified securities (if any) and the dividend the participating securities holder would have received had the holder not elected to participate in the plan; and
- (g) Feltex must, within 28 days of receiving a written notice from a participating securities holder that requests the termination of the holder's participation in the plan, terminate the holder's participation in the plan; and

- (h) no brokerage or commission costs are payable by participating securities holders in relation to any relevant specified securities to which those holders are entitled under the plan.
- (3) The exemption in clause 6 is subject to the further condition that a description of the plan and its terms and conditions is included in Feltex's annual report and placed on Feltex's website, together with a statement that there is available from Feltex (or Feltex's share registrar), on request and free of charge, a copy of the terms and conditions of the plan.

Dated at Wellington this 8th day of February 2005.

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

[L.S.]

J. Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 April 2010, exempts Feltex Carpets Limited (**Feltex**), and any NZX Trading and Advising Firm that it appoints to act as its broker, from sections 37 and 37A of the Securities Act 1978 and from all of the Securities Regulations 1983 other than regulation 8.

The notice concerns a dividend reinvestment plan under which shareholders of Feltex can choose to convert all or any of the dividends to be paid to them by Feltex into shares in Feltex without incurring brokerage or other charges. Under the plan, there will be no new issue of shares in Feltex. Instead, Feltex's broker will purchase Feltex shares that have previously been allotted and then transfer those shares to participating shareholders.

The exemption allows the offer of securities under the dividend reinvestment plan in a manner similar to that allowed under the terms of the Securities Act (Dividend Reinvestment) Exemption

Notice 1998, which is a class notice that relates to dividend reinvestment plans that offer new securities (the **class notice**).

The Securities Commission considers that it is appropriate to grant the exemptions because, for shareholders participating in a dividend reinvestment plan, there is no difference between a plan that offers new securities (to which the class notice would apply) and a plan that offers previously allotted securities. The conditions of this exemption are consistent with the conditions of the class notice and require additional disclosure about the method and timing of the pricing of the securities. The conditions include the following:

- every eligible shareholder must be informed about the plan and given a right to participate in it; and
- the documentation for the plan must contain provisions concerning (amongst other things) the manner in which the shares are acquired by the broker, the maximum threshold price that the broker may pay for such shares, the nature of the shares that are to be allotted, the return of dividend payments in certain circumstances, and the rights of participating shareholders; and
- a description of the plan and its terms and conditions must be included in Feltex's annual report and placed on its website.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 February 2005.
This notice is administered by the Securities Commission.
