



Securities Act (Westhaven (Existing Marina) Trust) 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 (Westhaven (Existing Marina) Trust) Exemption Notice 2002.

2 Commencement

This notice comes into force on 1 May 2002.

3 Expiry

This notice expires on the close of 30 April 2007.

4 Interpretation

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

Act means the Securities Act 1978

company means Ports of Auckland Limited

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 part of the Westhaven boat harbour, Auckland, to which the trust deed applies

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

trust deed means the deed made between the company and the trustee dated 15 August 1995

trustee means Westhaven Marina Trust Limited.

- (2) In this notice, a reference to the company means a reference to the company in its capacity as the manager of the Westhaven (Existing Marina) Trust and the original allotter of specified participatory securities, and in its capacity as the offeror of the securities.
- (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 Exemptions

The company, and every person acting on its behalf, are exempted, in the case of specified participatory securities, from—

- (a) sections 33(3) and 37(3) of the Act; and
- (b) clauses 6, 7(2) to (6), 10(2)(b), 13(2)(h), 14(3)(h), 17, 20 to 34, 37, and 38 of the Third Schedule of the Regulations; and
- (c) section 37A(1)(c) of the Act; and
- (d) section 37A(2) of the Act.

6 Conditions relating to trust deed

The exemptions granted by clause 5(a)-(c) are subject to the conditions that,—

- (a) as soon as reasonably practicable after the end of each financial year of the scheme, the trustee must prepare, or cause to be prepared, financial statements for the scheme; and
- (b) the trustee must ensure that the financial statements are audited; and
- (c) as soon as reasonably practicable after the beginning of each financial year of the scheme, the trustee must send,

or cause to be sent, to the holders of specified participatory securities a written statement containing reasonable details of the actual and budgeted contributions required to be made by those holders to the operating and other expenses of the scheme during that financial year.

7 **Conditions relating to registered prospectus**

The exemptions granted by clause 5(a)-(c) are also subject to the conditions that,—

- (a) every registered prospectus that contains or accompanies an offer of specified participatory securities contains prominent statements to the effect that—
 - (i) 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
 - (ii) in respect of each financial year of the scheme,—
 - (A) financial statements that comply with the Financial Reporting Act 1993 will be prepared for the scheme not later than the reporting date; and
 - (B) copies of the most recent 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
 - (C) every registered prospectus will be accompanied by, or have annexed to it, a copy of the most recent financial statements for the scheme; and
- (b) every registered prospectus containing or accompanying an offer of specified participatory securities is accompanied by—
 - (i) a copy of the most recent financial statements for the scheme; and
 - (ii) a copy of the most recent statement of the actual or budgeted contributions to the operating and other expenses of the scheme referred to in clause 6(c); and

- (c) every registered prospectus relating to the specified participatory securities contains, or has annexed to it, or is accompanied by, a copy of the licence for marina berths granted in respect of the scheme.

8 Condition requiring certificates to be lodged with Registrar

The exemption granted by clause 5(c) is also subject to the condition that the company, during the period that the offer of the specified participatory securities remains open for subscription, lodges with the Registrar certificates that—

- (a) relate to the registered prospectus for the specified participatory securities; and
- (b) refer to the company'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 by at least 2 directors of the company; and
- (d) are dated not later than 3 months after the date of the financial statements referred to in paragraph (b); and
- (e) state that, in the opinion of the company'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
- (f) state that, except to the extent permitted by this notice, the information contained in the registered prospectus complies with the Third Schedule of the Regulations.

9 Condition relating to application money

The exemption granted by clause 5(d) is subject to the condition that at least 10% of the purchase price of the security is payable within 7 days of notification of acceptance by the company of an application to subscribe for or purchase the security.

Dated at Wellington this 22nd day of April 2002.

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

[L.S.]

J. Diplock,
Chairperson.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on 1 May 2002 and expires on 30 April 2007.

The notice exempts Ports of Auckland 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 Westhaven Marina, Auckland.

The notice replaces the Securities Act (Westhaven (Existing Marina) Trust) Exemption Notice 1997, which expires on 30 April 2002.

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

Date of notification in *Gazette*: 26 April 2002.

This notice is administered in the Securities Commission.
