

Securities Act (Friendly Societies) Exemption Notice 2002

(SR 2002/291)

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

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- 1 Title**
This notice is the Securities Act (Friendly Societies) Exemption Notice 2002.
- 2 Commencement**
This notice comes into force on 1 October 2002.

Note

This notice is administered in the Securities Commission.

3 Expiry

This notice expires on the close of 30 September 2007.

4 Interpretation

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

Act means the Securities Act 1978

friendly society means a friendly society registered under the Friendly Societies and Credit Unions Act 1982, and named in the Schedule

Regulations means the Securities Regulations 1983

Schedule 2 means Schedule 2 of the Regulations

Schedule 3 means Schedule 3 of the Regulations.

(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 friendly society and every person acting on its behalf are exempted from the following in respect of any participatory securities of which the friendly society is the issuer:

(a) sections 37(2) and (3), 37A(2), 51, 52, and 53E of the Act; and

(b) section 54 of the Act; and

(c) regulation 25 of the Regulations; and

(d) clauses 3 and 4 of Schedule 7 of the Regulations; and

(e) clauses 7(5) and (6), 8, and 17 of Schedule 3; and

(f) clauses 6 and 21 to 34 of Schedule 3; and

(g) regulation 7(1)(b), and clause 38 of Schedule 3.

(2) Every friendly society and every person acting on its behalf are exempted from the following in respect of any life insurance policies of which the friendly society is the issuer:

(a) sections 51, 52, and 53E of the Act; and

(b) regulation 7(1)(d) of the Regulations; and

(c) clause 12(4) to (6) of Schedule 3B of the Regulations.

6 Statements of securities held

The exemption granted by clause 5(1)(b) is subject to the condition that the friendly society sends, or causes to be sent, to

each holder of participatory securities of which the friendly society is the issuer, at any time on request and within 1 month of each allotment of a security, a written statement that properly evidences the amount, nature, and ownership of all participatory securities held by the security holder.

7 Profits of friendly society

The exemption granted by clause 5(1)(c) is subject to the condition that the registered prospectus relating to the participatory securities contains a brief description of the terms relating to the use or distribution of any profits of the friendly society.

8 Deed of participation

The exemption granted by clause 5(1)(d) is subject to the condition that the deed of participation relating to the participatory securities provides—

- (a) that the friendly society has the following duties:
 - (i) to carry out its obligations under the terms of the offer of participatory securities, the provisions of the Friendly Societies and Credit Unions Act 1982, and the rules of the friendly society registered under that Act; and
 - (ii) to use its best endeavours and skill to ensure that the affairs of the friendly society are conducted in a proper and efficient manner; and
 - (iii) to use due diligence and vigilance in the exercise and performance of its functions, powers, and duties:
- (b) that the friendly society must, from time to time, at the request of the statutory supervisor or of persons holding not less than one-tenth in number of the participatory securities (or a particular class of the participatory securities), summon a meeting of the holders of those participatory securities (or particular class of participatory securities) for the purpose of giving to the statutory supervisor their opinions or directions in relation to the exercise of its powers:
- (c) that the statutory supervisor may on its own volition, and must at the request of persons holding not less than

one-tenth in number of the participatory securities (or a particular class of the participatory securities), summon a meeting of the holders of the participatory securities (or particular class of participatory securities) for the purpose of giving to the statutory supervisor their opinions or directions in relation to the exercise of its powers:

- (d) that every meeting summoned under either paragraph (b) or paragraph (c)—
 - (i) must be summoned by sending by post a notice, specifying the time and place of the meeting, to every holder of the participatory securities (or particular class of participatory securities) at that person's last known address not later than 14 days before the date of the proposed meeting; and
 - (ii) must be chaired by a person nominated by the statutory supervisor or any other person that may be appointed in that behalf by the holders of the participatory securities (or particular class of participatory securities) present at the meeting.

9 Registered prospectus

- (1) The exemption granted by clause 5(1)(f) is subject to the condition that the registered prospectus relating to the participatory securities contains all of the information, statements, and other matters specified in the following in respect of the friendly society:
 - (a) clause 7 of Schedule 2; and
 - (b) clauses 16 to 32 of Schedule 2.
- (2) The clauses referred to in subclause (1) must be read as if references to debt securities were references to participatory securities and references to the group were references to the friendly society.
- (3) Subclause (1)(b) does not apply if—
 - (a) the latest financial statements for the friendly society that have been registered under the Financial Reporting Act 1993 contain, or are accompanied by, financial statements for the friendly society containing the in-

- formation required to be contained in the registered prospectus by clauses 16 to 32 of Schedule 2; and
- (b) the registered prospectus relating to the participatory securities refers to those latest financial statements and states the most recent accounting period covered by those statements.

10 Audit report

- (1) The exemption granted by clause 5(1)(g) is subject to the condition that every registered prospectus relating to the participatory securities distributed by, or on behalf of, the friendly society contains a copy of a report by a member of the Institute of Chartered Accountants of New Zealand who holds a certificate of public practice and who is qualified for appointment as an auditor of a friendly society under section 63 of the Friendly Societies and Credit Unions Act 1982 signed by that auditor (either in the auditor's own name or in that of the auditor's firm), stating—
 - (a) the work done by the auditor; and
 - (b) the scope and limitations of the audit; and
 - (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the friendly society; and
 - (d) whether the auditor has obtained all information and explanations that he or she has required; and
 - (e) whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the friendly society; and
 - (f) whether or not, in the auditor's opinion, the financial statements that are required by clauses 16 to 31 of Schedule 2 (as required under clause 9) and that are required to be audited—
 - (i) comply with the Regulations; and
 - (ii) subject to the Regulations, comply with generally accepted accounting practice; and
 - (iii) give a true and fair view of the state of affairs of the friendly society as at the relevant date and of the results and cash flows of the friendly society for the period to which they relate, taking

- into account information or explanations of the kind referred to in section 14(2) of the Financial Reporting Act 1993 (if any)—and, if they do not, the respects in which they do not; and
- (g) whether the amounts stated under clause 7(2) and (3) of Schedule 2 (as required by clause 9) and clause 10(2) and (3) of Schedule 3 have been taken from audited financial statements, and whether or not the amounts have been correctly taken.
- (2) The exemption granted by clause 5(1)(g) is subject to the further condition that every prospectus relating to the participatory securities delivered to the Registrar for registration under the Act by, or on behalf of, the friendly society has endorsed on it, has attached to it, or is accompanied by—
- (a) the signed auditor's report required to be contained in the registered prospectus under clause (1); and
 - (b) a statement, dated not earlier than 7 days before the specified date and signed by the auditor (either in the auditor's own name or in that of the auditor's firm), that the auditor consents to the report appearing in the registered prospectus in the form in which it appears.
- (3) If financial statements are referred to in a registered prospectus under clause 9(3), a report under subclause (1) is not required to contain information of the kinds referred to in subclause (1)(a) to (g) to the extent that that information is contained in a report by an auditor (being an auditor of a kind referred to in subclause (1)(a)) that is registered under the Financial Reporting Act 1993.

11 Terms of life insurance policies

The exemption granted by clause 5(2)(b) is subject to the condition that every prospectus relating to life insurance policies of the friendly society delivered to the Registrar for registration under the Act has endorsed on it, has attached to it, or is accompanied by, a statement of all the terms of the life insurance policies to which the prospectus relates, whether those terms are set out in the friendly society's rules or elsewhere.

Schedule
Friendly societies

cl 4(1)

Independent Order of Odd Fellows of New Zealand Friendly Society

Manchester Unity Friendly Society

The Hibernian Catholic Benefit Society

The item The Hibernian Catholic Benefit Society was inserted, as from 29 October 2004, by clause 3 Securities Act (Friendly Societies) Exemption Amendment Notice 2004 (SR 2004/373).

Dated at Wellington this 17th day of September 2002.

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

J Diplock,
Chairperson.

[LS]

Explanatory note

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

This notice, which comes into force on 1 October 2002 and expires on 30 September 2007, replaces the Securities Act (Friendly Societies) Exemption Notice 1997.

This notice exempts, subject to conditions, the friendly societies named in the Schedule from various provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of participatory securities and life insurance policies issued by them.

The provisions of the previous notice have been carried forward with only 1 change of substance. Under the Securities Act (Friendly Societies) Exemption Notice 1997, the exemption relating to section 54 of the Securities Act 1978 was conditional on a written statement being provided to security holders at least once within 1 month of each allotment of a security. This is similar to the statutory requirement under section 54(1) of that Act, except that section 54(1) requires the certificate of a security to be sent to the holder within 1 month of the allotment. There does not appear to be any substantive reason why there should be any differentiation. Accordingly, the condition of the exemption has been amended so that it is conditional on a written

statement being sent within 1 month of allotment (as is required by section 54(1) of the Securities Act 1978) and at any time on request.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 September 2002.
