

# Securities Act (Group Investment Index Funds) Exemption Notice 2002

(SR 2002/316)

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

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## Schedule

### Matters to be specified in deed of trust

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- 1 Title**  
This notice is the Securities Act (Group Investment Index Funds) Exemption Notice 2002.
  - 2 Commencement**  
This notice comes into force on 1 October 2002.

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#### 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

**distribution** means the direct or indirect transfer to a holder of specified participatory securities of money or property—

- (a) that is received by the fund in respect of investments held by the fund; and
- (b) that is held on trust for holders of specified participatory securities

**fund** means a Group Investment Fund established under section 29 of the Trustee Companies Act 1967, or under section 42A of the Public Trust Office Act 1957, or under section 63 of the Public Trust Act 2001, that is also a passive index fund in that it—

- (a) is required under the terms of its trust deed or the terms of the offer of specified participatory securities to hold securities as near as practically possible to the securities' proportions in an index; and
- (b) at the date of any registered prospectus relating to specified participatory securities, is the subject of a ruling from the Inland Revenue Department to the effect that gains realised from the sale of securities by the fund in order to match the composition and weighting of the index will not be taxable under the provisions of the Income Tax Act 1994

**NZX** means New Zealand Exchange Limited

NZX: this definition was inserted, as from 11 June 2004, by clause 3 Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2004 (SR 2004/172).

**Regulations** means the Securities Regulations 1983

**specified participatory security** means a participatory security—

- (a) that is an interest in a fund; or
- (b) that confers upon the holder of the participatory security the right to participate in any money or property that is the subject of a distribution

**trust deed**, in relation to a fund, means the trust deed entered into by a trustee and a manager relating to the establishment of the fund

**trustee** means—

- (a) a trustee company within the meaning of section 2 of the Trustee Companies Act 1967; or
  - (b) the Public Trust within the meaning of section 4 of the Public Trust Act 2001.
- (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

Every trustee and manager in relation to a fund and every person acting on behalf of the trustee or manager are exempted from the following provisions in respect of any specified participatory securities:

- (a) sections 33(3) and 37(3) of the Act; and
- (b) 37A(1A)(c)(i) of the Act; and
- (c) regulation 3(3) of the Regulations; and
- (d) regulation 5(2) of the Regulations.

### 5A Exemption from regulation 23 of Regulations

- (1) The trustee and manager and every person acting on behalf of either or both of them in respect of any fund for which NZX or any wholly-owned subsidiary of NZX is the manager are exempted from regulation 23 of the Regulations in respect of any specified participatory securities that are interests in that fund.
- (2) The exemption in subclause (1) is subject to the condition that the registered prospectus or any advertisement relating to the specified participatory securities includes the following statement:
- “Units in the [*name of fund*] have been accepted for quotation by New Zealand Exchange Limited and will be quoted upon completion of allotment procedures.”

Clause 5A was inserted, as from 19 December 2002, by clause 3 Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2002 (SR 2002/424).

Clause 5A was substituted, as from 11 June 2004, by clause 4 Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2004 (SR 2004/172).

## **6 Deed of participation and written authorisation**

The exemption granted by clause 5(a) is subject to the following conditions:

- (a) that the trust deed contains provisions specifying the matters set out in the Schedule; and
- (b) that the registered prospectus contains—
  - (i) a description of the principal terms and conditions of the trust deed; and
  - (ii) a statement that the trust deed may be inspected without fee at a place (that is also stated) by any person who so requests; and
  - (iii) a statement that a copy of the trust deed will be sent to prospective and current investors, free of charge, on request; and
- (c) that the registered prospectus contains a statement by the trustee—
  - (i) that the offer of the securities complies with the trust deed; and
  - (ii) as to whether or not the trustee guarantees the repayment of securities; and
  - (iii) as to whether or not the trustee is under any obligation to ascertain whether any breach of the terms of the trust deed or of the offer of the specified participatory securities has occurred; and
- (d) it is a term of the offer that the accounting records of the fund are audited at least once a year by a qualified auditor; and
- (e) that any interim statement of financial position, statement of financial performance, and statement of cash flows of the fund contained in or accompanying the registered prospectus in respect of the specified participatory securities are audited.

## **7 Director's certificate**

The exemption granted by clause 5(b) is subject to the condition that the certificate that relates to the registered prospectus

states that, in the opinion of the directors of the issuer after enquiry by them, the financial position shown in the statement of financial position contained or referred to in the registered prospectus has not materially and adversely changed during the period from the date of the statement of financial position to the date of the certificate, other than as a result of fluctuation in the market price of the assets of the fund or the redemption of specified participatory securities.

## **8 Matters specified in Schedule 3A of Regulations**

- (1) The exemption granted by clause 5(c) is subject to the condition that the registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 3A of the Regulations that are applicable as though—
  - (a) a reference to a unit is a reference to an interest in a fund; and
  - (b) a reference to a unit trust is a reference to a fund; and
  - (c) a reference to a unit trust holder is a reference to a holder of an interest in a fund; and
  - (d) a reference to a unit trustee is a reference to the trustee.
- (2) However, the registered prospectus does not have to contain the information specified in clause 6(3)(a)(ii) of Schedule 3A of the Regulations to the extent that the provision requires financial statements to distinguish between realised and unrealised net gains or losses on investments.

Subclause (2) was inserted, as from 30 July 2004, by clause 3 Securities Act (Group Investment Index Funds) Exemption Amendment Notice (No 2) 2004 (SR 2004/224).

## **9 Valuation**

The exemption granted by clause 5(d) is subject to the following conditions:

- (a) that the valuation included or referred to in the registered prospectus relates only to the historical values of a specified participatory security; and
- (b) that the registered prospectus contains—

- (i) a statement of the method by which the historical values of the specified participatory security were calculated; and
- (ii) the date of the valuation; and
- (iii) a description of the relationship of the historical values of the specified participatory security to the index to which the fund relates.

## **10 Transitional provision**

- (1) This clause applies to any specified participatory security offered to the public in a registered prospectus dated on or before 30 September 2002.
- (2) An offer and allotment of a security to which this clause applies may be made in accordance with either—
  - (a) this notice; or
  - (b) the Securities Act (Group Investment Index Funds) Exemption Notice 1997 as in force immediately before that notice expired as if that notice had not expired.

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## **Schedule**

cl 6(a)

### **Matters to be specified in deed of trust**

#### **1 Investment of fund**

The investment or classes of investment in which the assets of the fund may be invested.

#### **2 Capital of fund**

- (1) Whether any limits as to number or amount apply to all specified participatory securities or to any class of specified participatory securities that have been or may be issued in respect of the fund and, if so, the nature of those limits.
- (2) The liability, if any, of the holders of the specified participatory securities to contribute to the fund before its winding up.
- (3) If there is, or is to be, a minimum amount of specified participatory securities that must be allotted before the commencement of the fund, a statement of that minimum amount.

**3 Redemption and transfer of specified participatory securities**

The terms relating to the redemption, transfer, and transmission of the specified participatory securities.

**4 Winding up of fund**

- (1) The circumstances in which the fund must or may be wound up, and the procedure for winding up.
- (2) The rights and liabilities of holders of specified participatory securities on, and in the course of, winding up the fund.

**5 Meetings**

The frequency of, procedure for convening and holding, business to be conducted at, and voting rights at meetings of holders of specified participatory securities.

**6 Trustee**

- (1) The terms relating to the appointment, remuneration, and, if any, removal from office of the trustee.
- (2) The powers of the trustee, including any borrowing powers and any powers to delegate the management of the fund.
- (3) The duties and liabilities of the trustee, including the duty to hold the assets of the fund according to the terms of issue of the specified participatory securities.

**7 Manager**

- (1) The terms relating to the appointment, remuneration, and, if any, removal from office of the manager.
- (2) The powers of the manager, including any borrowing powers and any other powers in respect of the fund.
- (3) The duties and liabilities of the manager.

**8 Profits involved**

The terms relating to the use or distribution of any profits of the fund.

Dated at Wellington this 27th day of September 2002.

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

L A J Kavanagh,

Member.

[LS]

### **Explanatory note**

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

This notice, which replaces the Securities Act (Group Investment Index Funds) Exemption Notice 1997, comes into force on 1 October 2002 and expires on 30 September 2007. The notice exempts certain persons, subject to conditions, from compliance with provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of certain participatory securities. The securities are interests in Group Investment Funds established under section 29 of the Trustee Companies Act 1967.

This notice amends the exemptions available for group investment index funds by making this exemption into a class notice. Parties will no longer have to be named in a Schedule to the notice in order for the exemption to apply.

A further amendment is made so that disclosure is based on Schedule 3A of the Securities Regulations 1983 (relating to unit trust disclosure). The previous disclosure requirements were based on the Third Schedule of the Securities Regulations 1983.

Finally, the exemption from regulation 23 of the Regulations, which related to Group Investment Fund No. 2291 (known as NZSE 10 Index Fund), is omitted.

Certain other changes have been made to reflect current drafting practice.