

**Securities Act (Venture Capital Schemes)
Exemption Notice 2008**

Code of Practice

31 July 2008

CONTENTS

NOTICE OF APPROVAL3

1. DEFINITIONS4

2. OFFER OF SECURITIES MADE IN COMPLIANCE WITH THIS CODE5

3. REGISTRATION OF INVESTORS.....5

4. REGISTRATION OF BUSINESSES.....6

5. DEREGISTRATION7

6. ADVERTISING AND PROMOTION9

**7. CONTACT BETWEEN INVESTORS AND BUSINESSES, ALLOTMENT OF
SECURITIES.....10**

8. INVESTORS’ MEETINGS.....12

9. CODE OF PRACTICE AMENDMENT AND COMPLIANCE13

APPENDIX: REGISTERED BUSINESS INFORMATION PACK

NOTICE OF APPROVAL

CODE OF PRACTICE

Notice is hereby given that this Code of Practice has been approved by the Securities Commission for the purposes of the Securities Act (Venture Capital Schemes) Exemption Notice 2008. This approval has effect from the notification in the Gazette of the Securities Act (Venture Capital Schemes) Exemption Notice 2008 on 31 July 2008.

Dated at Wellington this *30th* day of *July*, 2008.

The COMMON SEAL of the)
SECURITIES COMMISSION)
was affixed in the presence of)



Member

CODE OF PRACTICE

1. DEFINITIONS

1.1 In this Code of Practice the following words and expressions have the following meanings:

“Business Registration Information Pack” means the information required to be supplied by businesses applying for registration as a Registered Business under the Scheme. If the business is accepted for registration this information will be provided to Registered Investors. See the prescribed form attached.

“Code of Practice” means all the provisions set out in this Code and any prescribed forms referred to in this Code relating to the offering of equity or participatory securities by Registered Businesses and any amendments to this Code or prescribed forms approved by the Securities Commission.

“Eligible Person” has the same meaning as in section 5(2CC) of the Securities Act 1978 and, for that purpose, section 5(2CD) to (2CF) of the Act apply with all necessary modifications and subject to the requirement in section 5(2CE)(c) of the Act being disregarded and in substitution there is a requirement for the person to whom the offer is made to sign a written acknowledgment, before the specified equity security or specified participatory security is allotted to the person, that the financial service provider has not given the person a registered prospectus relating to the security.

“Exemption Notice” means the Securities Act (Venture Capital Schemes) Exemption Notice 2008.

“Expression of Interest Advertisement” means an advertisement seeking investors for a business opportunity offered by a Registered Business and contains the information prescribed by part 9 of the Business Registration Information Pack.

“Investor Meeting” means a meeting held by a Scheme Administrator in relation to one or more investment opportunities available through a Scheme.

“Investment Statement” means an investment statement prepared in accordance with the Securities Act 1978 and the Securities Regulations 1983.

“NZGAAP” means generally accepted accounting practice, and has the meaning given to that term in section 3 of the Financial Reporting Act 1993.

“Registered Business” means a person registered as such under clause 4 of this Code of Practice.

“Registered Investor” means a person who is at the relevant time entered into the records of a Scheme as a prospective investor under this Code of Practice.

“Scheme” means a scheme for the offering of specified equity securities or specified participatory securities, or both, to the public for subscription operated by a Scheme Administrator under this Code of Practice.

“Scheme Administrator” means a person named in the Schedule of the Securities Act (Venture Capital Schemes) Exemption Notice 2008.

- 1.2 Unless the context otherwise requires, any term that is defined in the Securities Act 1978 and that is used, but not defined, in this Code, has the same meaning as it does in that Act.

2. OFFER OF SECURITIES MADE IN COMPLIANCE WITH THIS CODE

- 2.1 Any business or organisation that makes an offer of securities to the public as defined in the Securities Act 1978, must comply with all of the requirements of the Securities Act 1978, and the Securities Regulations 1983. In most cases these laws require the business to register a prospectus and to prepare an investment statement, each containing information about the issuer and the securities being offered. Offers of participatory securities must have a statutory supervisor. There are restrictions on the way offers of securities can be advertised.
- 2.2 This Code sets out an alternative procedure for offers of securities made by businesses that have registered with a Scheme Administrator named in the Exemption Notice.
- 2.3 A Registered Business who makes an offer of equity securities or participatory securities in compliance with this Code may rely on the exemptions in the Exemption Notice from the requirement to have a registered prospectus and from certain of the advertising requirements of the law. A Registered Business making an offer of participatory securities in accordance with the Code may additionally rely on an exemption from the requirement to have a statutory supervisor and deed of participation. Failure to comply with all of the terms of the Code will result in the offer being subject to all of the provisions of the Securities Act and Regulations and any relevant penalties.

3. REGISTRATION OF INVESTORS

- 3.1 A person may apply to become a Registered Investor under any Scheme.
- 3.2 If a person wishes to become a Registered Investor that person must:
- (a) pay any application fee set by the Scheme Administrator of the relevant Scheme; and
 - (b) complete an application form addressed to the Scheme Administrator stating that that person wishes to become a Registered Investor in the relevant Scheme. The application form must be completed to the satisfaction of the Scheme Administrator of the relevant Scheme.
- 3.3 A Scheme Administrator may accept or reject an application for registration as a Registered Investor at its absolute discretion. If it accepts the application it will list that person as a Registered Investor with the Scheme administered by that Scheme

Administrator. If it declines the application it will return to the applicant the application form, any other information received from the applicant, and any application money.

4. REGISTRATION OF BUSINESSES

4.1 A business which wants to raise funds from the public for a project or venture may apply to become a Registered Business under any Scheme.

4.2 To apply for registration under a particular Scheme a business must:

- (a) pay any application fee set by the Scheme Administrator of the relevant Scheme; and
- (b) provide the relevant Scheme Administrator with:
 - (i) the information prescribed by the Registered Business Information Pack (see the prescribed form attached) which must disclose all information about the offer of securities likely to materially affect a prospective investor's assessment of the investment opportunity; and
 - (ii) any additional information that the Scheme Administrator considers necessary for it to establish whether the person is suitable to be registered as a Registered Business.

4.3 Before registering any business a Scheme Administrator will:

- (a) use its best endeavours to ensure that the capital being sought by the business is an offer of either equity securities or participatory securities;
- (b) confirm the applicant has received a copy of this Code of Practice.

4.4 A Scheme Administrator to whom an application is made for registration under this clause will have an absolute discretion in deciding whether a person shall be registered as a Registered Business. Without limiting this discretion, the Scheme Administrator will take into account the following matters:

- (a) the information prescribed by the Registered Business Information Pack;
- (b) any additional information received from the applicant or from any other source.

4.5 The Scheme Administrator must consider all of the information supplied by the applicant and form an opinion as to whether on its face it is inaccurate or misleading. In doing this the Scheme Administrator may rely on the information supplied by the applicant and is not required to undertake independent investigations or verifications of the information supplied. The Scheme Administrator has discretion to request any additional information it considers relevant to assess the suitability of the business for registration. The Scheme Administrator undertakes no responsibility to the applicant, the applicant's directors, shareholders, creditors, or to any investor, for the accuracy of the information supplied.

- 4.6 No Scheme Administrator shall accept for registration, or continue to register, any business which advises the Scheme Administrator that it has already raised more than \$5,000,000 under the Exemption Notice and/or any predecessor exemption notice granted by the Securities Commission, or that it seeks to raise more than \$5,000,000 under these exemption notices.
- 4.7 No Scheme Administrator shall accept for registration, or continue to register, any business where:
- (a) in instances where an offer of equity securities is proposed, the aggregate amount of capital and reserves of, and loans made by shareholders of the issuer to, the relevant business exceeds \$10,000,000 at the commencement of the offer:
 - (b) in instances where an offer of participatory securities is proposed, the aggregate amount of the issuer's assets and the capital and reserves of, and loans made by holders of participatory securities to participatory schemes managed by the issuer exceeds \$10,000,000 at the commencement of the offer.

These amounts must be determined by reference to the financial statements of the issuer or participatory scheme for the most recently completed accounting period (unless no such accounting period exists).

- 4.8 If a Scheme Administrator decides that an applicant is suitable to be registered as a Registered Business the Scheme Administrator will register that person as a Registered Business with the Scheme administered by that Scheme Administrator by entering the name and address of the business into the records of the Scheme.
- 4.9 In the course of registering a business the Scheme Administrator must prepare a file containing all information which has been used by the Scheme Administrator in forming an opinion that the business is suitable to be registered.
- 4.10 Where a Registered Business has prepared an Investment Statement relating to securities being offered under the Scheme, that business shall lodge a copy of the Investment Statement with the Scheme Administrator of the Scheme with which the business is registered.
- 4.11 If the Scheme Administrator declines the application for registration as a Registered Business it will return the application form, any other information received from the applicant. It may retain the application fee money.

5. DEREGISTRATION

- 5.1 The Scheme Administrator of a Scheme must maintain a register of Registered Investors with that scheme.
- 5.2 The Scheme Administrator must remove from the register the name of any Registered Investor who gives notice that he or she no longer wishes to be registered as a Registered Investor.
- 5.3 A Registered Business must notify its Scheme Administrator as soon as practicable if it no longer wishes to be a Registered Business.

5.4 The Scheme Administrator of a Scheme will cancel the registration of a Registered Business where:

- (a) that business has given notice that it is to cease being a Registered Business; or
- (b) the Scheme Administrator is of the opinion that the information upon which the Scheme Administrator accepted that person as a Registered Business was, or has become, inaccurate or misleading in a material way and that person has not promptly amended that information to the Scheme Administrator's satisfaction, or the Scheme Administrator considers it is not appropriate that the business continue to be registered as a Registered Business in light of the new information; or
- (c) the Scheme Administrator is of the opinion that the Registered Business has failed to comply with this Code of Practice; or
- (d) the business has commenced trading and the most recent financial statements of the business provided for use under this Code are more than 9 months old;
- (e) the business has not commenced trading and the offer under the Scheme commenced more than 6 months ago;
- (f) the Scheme Administrator becomes aware that the Registered Business has already raised more than \$5,000,000 under the Exemption Notice and/or any predecessor exemption notice granted by the Securities Commission, or seeks to raise more than \$5,000,000 under these exemption notices;
- (g) the Scheme Administrator becomes aware that:
 - (i) in instances where an offer of equity securities is proposed, the aggregate amount of capital and reserves of, and loans made by shareholders of the Registered Business to it exceed \$10,000,000 at the commencement of the offer;
 - (ii) in instances where an offer of participatory securities is proposed, the aggregate amount of the Registered Business's assets and the capital and reserves of, and loans made by holders of participatory securities to participatory schemes managed by the Registered Business exceeds \$10,000,000 at the commencement of the offer.

These amounts must be determined by reference to the financial statements of the issuer or participatory scheme for the most recently completed accounting period (unless no such accounting period exists).

6. ADVERTISING AND PROMOTION

- 6.1 No business which has applied for registration as a Registered Business under a Scheme, but which has not yet been accepted, may offer or promote securities to the public other than to Eligible Persons.
- 6.2 No Registered Business or Scheme Administrator may offer or promote securities to the public, other than to Eligible Persons, except through the Scheme and by means of:
- (a) publication of Expression of Interest Advertisements which comply with clauses 6.3 and 6.4 and the content of which has been approved for publication by the Scheme Administrator; or
 - (b) Investors' Meetings held in accordance with clause 8; or
 - (c) provision to Registered Investors of a Registered Business Information Pack; or
 - (d) provision to Registered Investors of an Investment Statement subsequent to, or together with, the provision of a Registered Business Information Pack; or
 - (e) provision to Registered Investors of any additional information subsequent to, or together with, the provision of a Registered Business Information Pack.
- 6.3 Expression of Interest Advertisements may be publicly distributed by a Scheme Administrator or a Registered Business, including by publication in a newspaper, magazine or website. The advertisement must comply with part 9 of the "Business Registration Information Pack" prescribed form including the requirements to direct prospective investors to the Scheme Administrator and provide the appropriate contact details, and not to provide the name and contact details of the business. To avoid express identification of the Registered Business, the newspaper, magazine, website or other means of publication must not be identifiable as distributed by the Registered Business.
- 6.4 If a Registered Business to which an Expression of Interest Advertisement relates has had its registration cancelled, or any particular of the advertisement material to the offer has become inaccurate or misleading, then the advertisement should not be further published. Additionally the Registered Business must ask the publishers of any publications due for distribution to remove the advertisement from the publication if the advertisement has not already been printed.
- 6.5 Scheme Administrators may provide the Registered Business Information Pack together with any other information about a Registered Business to other Scheme Administrators. Marketing of an offer by multiple Scheme Administrators is permitted. In such circumstances the Scheme Administrators should agree between themselves in advance of distribution of any advertising or offer documents which Scheme Administrator is responsible for the various obligations under the Code.

7. CONTACT BETWEEN INVESTORS AND BUSINESSES, ALLOTMENT OF SECURITIES

- 7.1 The requirements of this Code of Practice about contact between prospective investors and Registered Businesses and allotment of securities by Registered Businesses do not restrict Registered Businesses contact with, or allotment of securities to, persons who are not members of the public as defined by the Securities Act 1978, or who are Eligible Persons as defined by the Exemption Notice and this Code of Practice.
- 7.2 Clause 7.1 is subject to the exception that in instances where a Registered Business wishes to allot securities to an Eligible Person in addition to other Registered Investors the Scheme Administrator must be satisfied before that allotment that the Eligible Person meets the criteria required by the Exemption Notice and this Code of Practice. To meet this obligation the Scheme Administrator must review and retain on file copies of the requisite written statements from the independent accountant or financial service provider and investor.
- 7.3 A person must be a Registered Investor before a Scheme Administrator can give that person any information about an investment opportunity available through a Scheme other than an Expression of Interest Advertisement.
- 7.4 A Scheme Administrator may provide Registered Investors with a Registered Business Information Pack. However, if a Registered Business has not lodged an Investment Statement with the Scheme Administrator the Scheme Administrator must get consent of the Registered Business prior to the release of the Registered Business Information Pack.
- 7.5 Concurrent with, or subsequent to, the provision of a Registered Business Information Pack a Scheme Administrator may:
- (a) give the Registered Investor's name and contact details to the Registered Business;
 - (b) provide the Registered Investor with any additional information about the offer including, where available, an Investment Statement, except that where a Registered Business has not lodged an Investment Statement with the Scheme Administrator the Scheme Administrator must get the consent of the Registered Business prior to the release of any further information.
- 7.6 When a member of the public contacts a Registered Business the Registered Business must confirm with the investor that he, she or it is registered as a Registered Investor, and has received a Registered Business Information Pack in relation to the securities they are offering. If either of these requirements have not been met the Registered Business must refer the prospective investor to their Scheme Administrator.
- 7.7 When a member of the public contacts a Registered Business, and confirms to that business that he, she or it is a Registered Investor and has received a Registered Business Information Pack in relation to the securities the Registered Business is offering, the Registered Business may:

- (a) determine at its discretion whether it wishes to enter into negotiation with the Registered Investor and on what terms provided the terms offered do not materially differ from the opportunity described in the Registered Business Investment Pack;
 - (b) provide any further information to the Registered Investor about the securities being offered and the project or venture for which investment is sought;
 - (c) provide an Investment Statement or negotiate an Investment Statement with the Registered Investor. In either case the terms of the Investment Statement must comply with the requirements of the Securities Regulations 1983 for Investment Statements and must not materially differ from the opportunity detailed in the Registered Business Information Pack.
- 7.8 A Registered Business must advise its Scheme Administrator and any Registered Investor it is aware is actively pursuing an offer of securities it has made of any information which comes to its attention at any time that is likely to materially affect a prospective investor's assessment of the offer. Where such information comes to the attention of a Registered Business which has a Registered Business Information Pack or an Investment Statement available, then the offer must be withdrawn and the Registered Business must either:
- (a) register a revised Registered Business Information Pack and lodge a revised Investment Statement incorporating those changes; or
 - (b) notify the Scheme Administrator and potential Registered Investors that the offer is withdrawn.
- 7.9 No Registered Business may allot securities to any member of the public (other than to an Eligible Person) unless it is satisfied prior to allotment:
- (a) the investor is a Registered Investor as defined by the Code, and has received a Registered Business Information Pack and an Investment Statement in relation to the securities to be allotted and has entered into a legally binding contract with the business in respect of the allotment;
 - (b) the Registered Business Information Pack and the Investment Statement together provide all of the information that is likely to materially affect a Registered Investor's assessment of the offer; and
 - (c) it has agreed to provide the Registered Investor with financial statements of the business on an ongoing basis and for no less than one year.
- 7.10 A Registered Business shall bank any subscriptions in a trust account until the terms of the offer are met in accordance with the Investment Statement and any other offer documents. If the terms are not met the funds shall be returned to the subscriber.
- 7.11 A Registered Business must notify the Scheme Administrator when an offer is accepted by a Registered Investor.

8. INVESTORS' MEETINGS

- 8.1 A Scheme Administrator may arrange at its discretion Investors' Meetings at any time. A meeting may be in relation to one or more investment opportunities offered by Registered Businesses.
- 8.2 At the Scheme Administrator's discretion the occurrence of Investor Meetings may be advertised publicly or exclusively to members of the public who are Registered Investors. If a Scheme Administrator(s) chooses to advertise the occurrence of an Investor Meeting the advertisement:
- (a) must describe how people can contact the Scheme Administrator for more information about the Investor Meeting;
 - (b) may additionally describe:
 - (i) the nature and purpose of the Scheme(s) which will be represented at the meeting;
 - (ii) one or more Expression of Interest Advertisements relating to the opportunities to be presented at the meeting.
- 8.3 The Scheme Administrators holding the Investor Meeting are responsible to restrict attendance at the meeting to:
- (a) employees or advisers of any Scheme Administrator;
 - (b) persons making presentations on behalf of a Registered Business;
 - (c) Registered Investors and their employees or advisers;
 - (d) persons who are Eligible Persons and their employees or advisers;
 - (e) persons who are not members of the public in terms of the Securities Act 1978 and their employees or advisers;
 - (f) persons who in the course of their business or employment give investment advice;
 - (g) persons who in the course of their business or employment give business development advice.
- 8.4 The Scheme Administrators holding the Investor Meeting are responsible to ensure that no person makes a presentation offering securities to the public other than a Registered Business.
- 8.5 The Scheme Administrator with which the Registered Business giving a presentation is registered is responsible to ensure that persons present are advised of information to the effect:
- (a) The businesses offering investment opportunities at the meeting can rely on some exemptions from the usual securities law requirements for raising funds.

This means information provided about the investment opportunities may not be as comprehensive as that usually available for prospective investors to assess the nature and risk of an investment. In particular there is no obligation to register a prospectus.

- (b) The Scheme Administrator does not advise on the merits or risks of investments. Investment in new or expanding businesses is very speculative and carries high risks. Prospective investors are strongly advised to verify all material facts and should consider seeking independent professional advice before deciding to invest.
- (c) Investors must receive a Registered Business Information Pack in relation to any opportunity before they invest in it. The Scheme Administrator has taken reasonable steps to ensure the information in the Pack is neither inaccurate nor misleading, but has not necessarily undertaken any independent investigation or verification of the information and does not give not guarantee about this.
- (d) Investors must also receive an Investment Statement in relation to the opportunity and that this may be provided by the business or negotiated between the business and investor.
- (e) Prospective investors can contact the Scheme Administrator with questions about the Scheme.

8.6 The Scheme Administrator with which the Registered Business is registered is responsible to answer any questions on the Scheme which attendees may have.

8.7 The Scheme Administrator may delegate its responsibilities pertaining to Investor Meetings to an agent, and/or it may use telecommunication technology to carry out these responsibilities. The Scheme Administrator remains responsible for ensuring all its responsibilities are met.

9. CODE OF PRACTICE AMENDMENT AND COMPLIANCE

9.1 This Code of Practice has been approved by the Securities Commission and may be amended from time to time with the approval of the Commission. The Commission does not approve or endorse any offer of securities made under this Code.

9.2 Despite any other provisions in this Code of Practice, an offer commenced under any Code of Practice previously approved by the Securities Commission may be completed in accordance with the terms of that Code of Practice or this Code of Practice. Any person registered as a Registered Investor or Registered Business under a Code of Practice previously approved by the Commission may, at the discretion of the responsible Scheme Administrator, be deemed to be a Registered Investor or Registered Business under this Code of Practice.

9.3 Except as provided in clause 9.2 this Code of Practice replaces and supersedes any Code of Practice previously approved by the Securities Commission.

9.4 Upon request to a Scheme Administrator a copy of this Code of Practice must:

- (a) be open to inspection by the public free of charge during working hours and subject any other reasonable restriction that the Scheme Administrator may impose; and
- (b) be promptly sent to the person requesting it by that Scheme Administrator without charge.

9.5 Where a Scheme Administrator maintains a website the Code of Practice must be published on the website.

9.6 Each Scheme Administrator operating under this Code shall provide the Securities Commission with an annual report concerning the operation of the Scheme operated by that Scheme Administrator, and where applicable, any national or regional alliance of Schemes to which that Scheme Administrator belongs.