



Securities Act (Venture Capital Schemes) Exemption Notice 2008

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 (Venture Capital Schemes) Exemption Notice 2008.

2 Commencement

This notice comes into force on its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 30 September 2012.

4 Interpretation

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

Act means the Securities Act 1978

code of practice means a code of practice for the regulation of offers of specified equity securities and specified participatory securities (made under a venture capital scheme) that is—

- (a) administered by a scheme administrator; and
- (b) approved for the time being by the Commission

eligible person has the same meaning as in section 5(2CC) of the Act and, for that purpose, section 5(2CD) to (2CF) of the Act apply with all necessary modifications (subject to sub-clause (2))

participatory scheme, in relation to a specified participatory security, means the arrangement or scheme to which the security relates

publicly available, in relation to a code of practice, means that,—

- (a) upon request to the scheme administrator (but subject to any reasonable restrictions that the scheme administrator may impose, so that not less than 2 hours in each working day is allowed for inspection), the code of practice must be open to inspection by the public, free of charge; and
- (b) upon request to the scheme administrator (but subject to any reasonable fee that the scheme administrator may impose), a copy of the code of practice must promptly be sent to any person who requests a copy; and
- (c) a copy of the code of practice must be published on an Internet site that is publicly accessible at all reasonable times

Regulations means the Securities Regulations 1983

scheme administrator means a person named in the Schedule

specified equity securities means equity securities that are offered to the public for subscription under a venture capital scheme

specified issuer, in relation to any specified equity securities or specified participatory securities, means a person who—

- (a) has been admitted to membership of a venture capital scheme; and
- (b) is bound by the rules of the venture capital scheme to comply with a code of practice

specified participatory securities means participatory securities that are offered to the public for subscription under a venture capital scheme

specified period means,—

- (a) in relation to a specified issuer,—
 - (i) the most recently completed accounting period of the specified issuer; or
 - (ii) if there is no such accounting period, the period from the date of commencement of business by the specified issuer to a stated date that is not more than 4 months before the commencement of the offer under the venture capital scheme:
- (b) in relation to a participatory scheme,—
 - (i) the most recently completed accounting period of the scheme; or
 - (ii) if there is no such accounting period, the period from the date of commencement of the scheme to a stated date that is not more than 4 months before the commencement of the offer under the venture capital scheme

specified securities means equity securities or participatory securities (or both) that are offered to the public for subscription under a venture capital scheme

venture capital 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 a code of practice.

- (2) For the purposes of the definition of eligible person in subclause (1), the requirement in section 5(2CE)(c) of the Act

must be disregarded, and in substitution there is a requirement for the person to whom the offer is made to sign a written acknowledgement, 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.

- (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 in respect of eligible persons

Every scheme administrator and every specified issuer is exempted from sections 33(3), 37, and 37A of the Act and the Regulations (except regulation 8) in respect of the offer and allotment of specified equity securities or specified participatory securities to an eligible person.

6 Condition of exemptions in clause 5

The exemptions in clause 5 are subject to the condition that, before any specified equity securities or specified participatory securities are allotted to the eligible person, the scheme administrator has advised the specified issuer in writing that the scheme administrator has received, in respect of the eligible person,—

- (a) a copy of the certificate under section 5(2CD) of the Act; or
(b) a copy of the written statement under section 5(2CE)(b) of the Act and a copy of the written acknowledgement under clause 4(2).

7 Exemptions for specified equity securities

Every scheme administrator and every specified issuer are exempted from section 37 of the Act and regulation 17 of the Regulations in respect of any specified equity securities.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the following conditions:

- (a) that the total amount raised by the specified issuer by the issue of specified securities does not exceed \$5,000,000:
- (b) that the aggregate amount of capital and reserves of, and loans made by shareholders of the specified issuer to, the specified issuer does not exceed \$10,000,000 at the commencement of an offer under the venture capital scheme:
- (c) that, before making any allotment of the specified equity securities to a subscriber, the specified issuer has given to the subscriber a copy of financial statements of the specified issuer in respect of the specified period, being statements that—
 - (i) have been audited; or
 - (ii) have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the Institute of Chartered Accountants of New Zealand; or
 - (iii) comply with the Financial Reporting Act 1993, except that they need not be audited or reviewed by a chartered accountant:
- (d) if the date of allotment of specified equity securities to a subscriber would be more than 9 months after the date of the financial statements of the specified issuer referred to in paragraph (c), that, before making any allotment of specified equity securities to a subscriber, the specified issuer has given to the subscriber a copy of interim financial statements of the specified issuer (being interim financial statements for a period that is not more than 9 months after the period to which the financial statements referred to in paragraph (c) relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the financial statements referred to in paragraph (c), but which need not be audited or reviewed by a chartered accountant):
- (e) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(ii),

that the financial statements include (at the top of each page) a statement in the following terms:

“Warning

These financial statements have not been audited.”:

- (f) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(iii), that the financial statements include (at the top of each page) a statement in the following terms:

“Warning

These financial statements have not been audited or reviewed by an independent third party.”:

- (g) that any document containing an offer of specified equity securities includes (at the front of the document) a prominent statement in the following terms:

“Risk warnings

Prospective investors are warned that the information provided about this offer may not be as comprehensive as that usually available for prospective investors to assess the nature and risk of an investment. There is no obligation to register a prospectus for this offer. [*Name of scheme administrator*] has reviewed the information contained in this form and considers it is neither inaccurate nor misleading, but has not necessarily undertaken any independent investigation or verification of the information and does not give a guarantee about this.

Prospective investors are further warned that neither [*name of scheme administrator*] nor the Securities Commission 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.”:

- (h) that no allotment of any specified equity securities is made if the date of allotment would be more than 9 months after the date of the statement of financial position or interim statement of financial position required

- to be given under paragraph (c) or (d), as the case may be:
- (i) that the offer of specified equity securities is made in accordance with a code of practice for the venture capital scheme;
 - (j) that the code of practice referred to in paragraph (i) is publicly available for the period between the offer of specified equity securities and the allotment of those securities;
 - (k) that, in respect of specified equity securities offered after 31 March in a calendar year, the scheme administrator has sent to the Commission a written report on the operation of the venture capital scheme for the preceding calendar year (unless the venture capital scheme has not been in operation during that preceding calendar year);
 - (l) that all advertisements distributed to the public by the specified issuer relating to the specified equity securities that are distributed before the offer is made must be distributed in accordance with clauses 11 and 12 and the code of practice for the venture capital scheme.
- (2) If the specified issuer has not commenced business before the commencement of the offer under the venture capital scheme,—
- (a) subclause (1)(c) to (f) and (h) do not apply; and
 - (b) the exemptions in clause 7 are subject to the conditions that—
 - (i) a statement to the following effect is included, immediately after the statement required by subclause (1)(g), in any document containing an offer of specified equity securities:
“Prospective investors are also warned that the business entity offering this investment has not yet commenced business and so there are no financial statements or other historical performance information in respect of the business entity.”; and
 - (ii) no allotment of specified equity securities is made if the date of allotment would be more than

6 months after the date of the commencement of the offer under the venture capital scheme.

- (3) For the purposes of subclause (1)(b), the aggregate amount of capital and reserves of, and loans made by shareholders of the specified issuer to, the specified issuer must be determined by reference to the specified issuer's financial statements for the most recently completed accounting period (unless there is no such accounting period).

9 Exemptions for specified participatory securities

Every scheme administrator and every specified issuer, not being a company, are exempted from sections 33(3) and 37 of the Act and regulation 17 of the Regulations in respect of any specified participatory securities.

10 Conditions of exemptions in clause 9

- (1) The exemptions in clause 9 are subject to the following conditions:
- (a) that the total amount raised by the specified issuer by the issue of specified securities does not exceed \$5,000,000;
 - (b) that the aggregate amount of the specified issuer's assets and the capital and reserves of, and loans made by holders of participatory securities to, the schemes (as defined in section 2(1) of the Act) managed by the specified issuer does not exceed \$10,000,000 at the commencement of an offer under the venture capital scheme;
 - (c) that, before making any allotment of the specified participatory securities to a subscriber, the specified issuer has given to the subscriber a copy of financial statements of the participatory scheme in respect of the specified period, being statements that—
 - (i) have been audited; or
 - (ii) have been reviewed by a chartered accountant in accordance with the guidelines for review engagements of the Institute of Chartered Accountants of New Zealand; or

- (iii) comply with the Financial Reporting Act 1993, except that they need not be audited or reviewed by a chartered accountant:
- (d) if the date of allotment of specified participatory securities to a subscriber would be more than 9 months after the date of the financial statements of the participatory scheme referred to in paragraph (c), that, before making any allotment of specified participatory securities to a subscriber, the specified issuer has given to the subscriber a copy of interim financial statements of the participatory scheme (being interim financial statements for a period that is not more than 9 months after the period to which the financial statements referred to in paragraph (c) relate and that contain information and particulars for the period to which they relate in respect of the same matters as are contained in the financial statements referred to in paragraph (c), but which need not be audited or reviewed by a chartered accountant):
- (e) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(ii), that the financial statements include (at the top of each page) a statement in the following terms:
“Warning
These financial statements have not been audited.”:
- (f) if the specified issuer provides the subscriber with financial statements of the type specified in paragraph (c)(iii), that the financial statements include (at the top of each page) a statement in the following terms:
“Warning
These financial statements have not been audited or reviewed by an independent third party.”:
- (g) that any document containing an offer of specified participatory securities includes (at the front of the document) a prominent statement in the following terms:
“Risk warnings
Prospective investors are warned that the information provided about this offer may not be as comprehensive

as that usually available for prospective investors to assess the nature and risk of an investment. There is no obligation to register a prospectus for this offer. [*Name of scheme administrator*] has reviewed the information contained in this form and considers it is neither inaccurate nor misleading, but has not necessarily undertaken any independent investigation or verification of the information and does not give a guarantee about this.

Prospective investors are further warned that neither [*name of scheme administrator*] nor the Securities Commission 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.”:

- (h) that no allotment of any specified participatory securities is made if the date of allotment would be more than 9 months after the date of the statement of financial position or interim statement of financial position required to be given under paragraph (c) or (d), as the case may be:
- (i) that the offer of specified participatory securities is made in accordance with a code of practice for the venture capital scheme:
- (j) that the code of practice referred to in paragraph (i) is publicly available for the period between the offer of the specified participatory securities and the allotment of those securities:
- (k) that, in respect of specified participatory securities offered after 31 March in a calendar year, the scheme administrator has sent to the Commission a written report on the operation of the venture capital scheme for the preceding calendar year (unless the venture capital scheme has not been in operation during that preceding calendar year):
- (l) that all advertisements distributed to the public by the specified issuer relating to the specified participatory securities that are distributed before the offer is made must

- be distributed in accordance with clauses 11 and 12 and the code of practice for the venture capital scheme.
- (2) If the participatory scheme has not commenced before the commencement of the offer under the venture capital scheme,—
- (a) subclause (1)(c) to (f) and (h) do not apply; and
 - (b) the exemptions in clause 9 are subject to the conditions that—
 - (i) a statement to the following effect is included, immediately after the statement required by subclause (1)(g), in any document containing an offer of specified participatory securities:
“Prospective investors are also warned that the scheme offered has not yet commenced and so there are no financial statements or other historical performance information in respect of the scheme.”; and
 - (ii) no allotment of specified participatory securities is made if the date of allotment would be more than 6 months after the date of the commencement of the offer under the venture capital scheme.
- (3) For the purposes of subclause (1)(b),—
- (a) the specified issuer’s assets must be determined by reference to the specified issuer’s financial statements for the most recently completed accounting period (unless there is no such accounting period); and
 - (b) the aggregate amount of capital and reserves of, and loans made by holders of participatory securities to, a scheme must be determined by reference to the scheme’s financial statements for the most recently completed accounting period (unless there is no such accounting period).

11 Exemptions for equity securities and participatory securities

Every specified issuer and every scheme administrator are exempted from section 33(1) and (3) of the Act and regulation

17 of the Regulations in respect of the distribution of any document that contains all of the following:

- (a) a statement to the effect that a person or business entity is considering making an offer of securities to the public through a venture capital scheme and is seeking preliminary indications of interest from the public in subscribing for the securities;
- (b) a statement to the effect that no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received a formal offer document completed and issued in accordance with a code of practice in respect of the venture capital scheme;
- (c) a request that indications of interest be forwarded in writing to the scheme administrator;
- (d) the name and contact details of the scheme administrator;
- (e) a statement to the effect that no indication of interest will involve an obligation or commitment of any kind.

12 Conditions of exemptions in clause 11

The exemptions in clause 11 are subject to the conditions that—

- (a) the document must not contain the name, or contact details, of the specified issuer; and
- (b) the document is dated and is not distributed to any person later than 6 months after the date of the document; and
- (c) any other information contained in the document must be limited to the following:
 - (i) a description of the securities intended to be offered, including a brief description of the terms of the securities and any rights or privileges to be attached to the securities;
 - (ii) a statement of the intended amount of subscriptions;
 - (iii) a brief description of the reasons for raising that amount;

- (iv) a statement as to whether the person or business entity that is considering making the offer of the securities seeks 1 investor or would consider several:
 - (v) a brief description of the project or venture to which the securities relate, including the industry sector, the size of the business, the projected turnover, the potential return on investment, the region in which the business is located, the potential role for an investor, and the types of skills, expertise, and contacts sought:
 - (vi) if projected turnover or the potential return on investment (or both) are included, a statement of the principal assumptions and method of calculation in accordance with which the information is calculated; and
- (d) the document is approved by the scheme administrator before its distribution.

13 Revocation

The Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003 (SR 2003/67) is revoked.

14 Transitional provision

If, before the commencement of this notice, a person has offered specified equity securities or specified participatory securities in reliance on the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003, the offer of those securities, and the advertising and allotment of those securities in connection with the offer, may continue to be made by that person in accordance with either—

- (a) this notice and a code of practice that is in force under this notice; or
- (b) the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003 (as in force immediately before that notice was revoked as if that notice had not been revoked) and a code of practice that was in force under that notice.

Schedule
Scheme administrators

cl 4(1)

Canterbury Development Corporation

EDANZ - The Economic Development Association of New Zealand
Incorporated

Enterprise Northland Trust (established by Deed of Trust dated
14 December 1998)

Manukau Enterprise and Employment Trust

Marlborough Regional Development Holdings Limited

Priority One - Western Bay of Plenty Incorporated

Venture Southland (constituted on 9 June 2001 by Heads of Agree-
ment between Invercargill City Council, Southland District Council,
and Gore District Council)

Waitakere Enterprise Trust Board

Wanganui Incorporated

Dated at Wellington this 29th day of July 2008.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

This notice comes into force on its notification in the *Gazette* and expires on 30 September 2012. It replaces the Securities Act (Local Authority and Other Venture Capital Schemes) Exemption Notice 2003 (the **former notice**).

The notice applies to offers of equity and participatory securities made in accordance with venture capital investment schemes administered under an approved code of practice by certain bodies designated by the Securities Commission.

The notice exempts the body administering the scheme and the members of the scheme, subject to conditions, from the prospectus and minimum subscription requirements of the Securities Act 1978 (the **Act**), regulation 17 of the Securities Regulations 1983 (the **Regulations**), and, in the case of offers of participatory securities, from the participation deed and statutory supervisor requirements of the Act.

The notice also exempts the body administering the scheme and members of the scheme from the authorised advertisement requirements of the Act, regulation 17 of the Regulations, and the participation deed and statutory supervisor requirements of the Act in respect of the distribution of certain documents that seek preliminary indications of interest by members of the public in subscribing for those securities.

The notice adds a new exemption for the body administering the scheme and the members of the scheme, subject to a condition, from the participation deed, statutory supervisor, prospectus, minimum subscription, and investment statement requirements of the Act and the Regulations in respect of the offer and allotment of securities to eligible persons (basically as defined in section 5(2CC) of the Act).

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the costs of full Securities Act 1978 compliant fund-raising is often prohibitive to small to medium start-up or expanding businesses seeking limited funds, or with limited existing resources with which to undertake the fund-raising process. However, in considering what relief from securities law requirements may be appropriate it is recognised that investment in businesses of this nature is high risk. Further, the entrepreneurs running the businesses are often enthusiastic and

convincing about the prospects for success but may be less informative about the risks of investment:

- the notice addresses the cost difficulties faced by these businesses in raising funds by providing substantial exemptions from the usual Securities Act 1978 requirements, but on conditions that alert investors to the risks of investing in businesses of this nature. The notice does this by allowing the businesses to raise funds with substantial exemptions from the usual securities law requirements but under the supervision of an independent scheme administrator:
- key differences between this notice and the former notice—
 - increase the range of businesses that can raise funds under it and the range of investors from whom funds can be sought (including wealthy and experienced investors as eligible persons) whilst remaining within the scope of the policy envisaged by the exemptions and improving the warnings and protections for investors; and
 - simplify rules and procedures imposed to make fundraising more cost and resource efficient; and
 - clarify requirements for compliance with the notice; and
 - update the schedule of scheme administrators designated by the Commission:
- the criteria the Commission will use to consider future applications for designation as scheme administrators, together with the code of practice, will be published on the Commission's Internet site.

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

Date of notification in *Gazette*: 31 July 2008.

This notice is administered by the Securities Commission.
