

Securities Act (Fairview Country Club) Exemption Notice 2011

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- 1 Title**
This notice is the Securities Act (Fairview Country Club) Exemption Notice 2011.
- 2 Commencement**
This notice comes into force on 5 November 2011.
- 3 Expiry**
This notice expires on the close of 31 October 2016.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
Agreement for Use means the document entitled Agreement for Use of Facilities at Fairview Country Club between the developer as

owner and the society as licensee which entitles the members of the society to use the facilities for a term of fifty years from 1 October 2011

clubhouse encumbrance means the encumbrance in favour of the society registered, or to be registered, against the computer register for the clubhouse land requiring, among other things, that the registered proprietor for the time being of the clubhouse land is bound by the Agreement for Use and must not transfer or assign its interest in the clubhouse land unless it secures a deed of covenant executed by the transferee or assignee to be bound by the Agreement for Use

clubhouse land means Lot 1 Deposited Plan 445143, computer register identifier 559395 or such part thereof on which the facilities are situated

computer register means—

- (a) a computer register within the meaning of section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or
- (b) a certificate of title issued under the Land Transfer Act 1952 or Unit Titles Act 2010

developed property means a property within the existing development or a proposed development, for which a computer register has been or will be issued or created, as part of the process of the development:

- (a) for an estate in fee simple or a leasehold estate under the Land Transfer Act 1952; or
- (b) for a stratum estate under the Unit Titles Act 2010

developer means—

- (a) Fairview Estate Limited; and
- (b) includes any assignee or successor in title of Fairview Estate Limited (in whole or in part) that continues the promotion and carrying out of a proposed development

existing development means Lots 1 to 150 on Deposited Plan 328738 for which computer registers have already been issued

existing owner means an owner of a developed property in the existing development

facilities means the following facilities on the clubhouse land that are, or upon their completion will be, licensed in whole or in part by the society:

- (a) cafe/restaurant;
- (b) members' bar;
- (c) golf shop;

- (d) tennis courts;
- (e) changing rooms;
- (f) health studio;
- (g) barbeque area;
- (h) petanque court; and
- (i) all access ways and other parts of the building described in the Agreement for Use but excluding the kitchen and service areas, and the clubroom/manager's office

incorporation member means a person who—

- (a) was a member of the society on its incorporation; but
- (b) is not an owner of a developed property or a non-residential member

member means an incorporation member, a residential member or a non-residential member

member's encumbrance means the encumbrance in favour of the society registered, or to be registered, against a computer register of a developed property and requiring the registered proprietor to be a member of the society on the terms set out in the rules

new owner means a person who has entered into a sale agreement for a developed property in the proposed development

non-residential member means any individual person, body corporate, or family who, or which, has become a member of the society in accordance with the rules

offer means the offer of specified securities to the public

owner of a developed property means a registered proprietor of a fee simple, leasehold, or stratum estate in a developed property

proposed development means any residential development proposed to be undertaken by the developer on the land currently described as Lot 2 Deposited Plan 445143 computer register identifier 559396, or in respect of any part of the lands currently described as Lot 151 Deposited Plan 328738 computer register identifier 117387 and Lot 157 Deposited Plan 328738 computer register 117384

Regulations means the Securities Regulations 2009

residential member means any individual person, or individual persons, or body corporate who has, have, or will become the owner of a developed property against which a member's encumbrance has been registered and who has, have, or will become a member of the society in accordance with the rules

rules means the rules of the society



sale agreement means an agreement for the sale of a fee simple, leasehold, or stratum estate in a developed property adopted or entered into by a developer as vendor

society means Fairview Country Club Incorporated, a society incorporated under the Incorporated Societies Act 1908

special levy means any levy that may be fixed under the rules by special resolution of the members of the society.

specified security means a participatory security in the form of membership of the society that confers rights to participate in the use of all or part of the facilities under the Agreement for Use

- (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 from sections 33(3), 37, 37A, 38A and 54 of Act and Regulations (except regulation 23)

The developer, the society, and every person acting on behalf of either or both of them is exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and the Regulations (except regulation 23) in respect of specified securities of which the developer or society is an issuer.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) where a subscriber for specified securities is an existing owner, that subscriber has, before subscription, received from the developer a copy of each of the following documents:
- (i) the rules and a copy of any agreement for the management of the society's affairs;
 - (ii) the Agreement for Use;
 - (iii) an offer document offering a specified security to that owner which includes the terms of the specified security including the condition relating to the member's encumbrance;
 - (iv) a specimen of the member's encumbrance; and
 - (v) a copy of the clubhouse encumbrance;
- (b) where a subscriber for specified securities is a new owner, that subscriber has, before subscription, received from the developer a copy of each of the following documents:
- (i) the rules and a copy of any agreement for the management of the society's affairs;
 - (ii) the Agreement for Use;
 - (iii) a specimen of the sale agreement relating to that subscriber and to a developed property, which includes

- the terms of the specified security including the condition relating to the member's encumbrance;
- (iv) the proposed plan of the subdivision to create the developed property, or, where a computer register has already been created for the developed property, a copy of the deposited plan for the developed property;
- (v) a specimen of the member's encumbrance; and
- (vi) a copy of the clubhouse encumbrance;
- (c) where a subscriber for specified securities is an existing owner, that subscriber has, before subscription, received from the developer a document that sets out a description of —
 - (i) the areas of land on which the facilities are situated;
 - (ii) the facilities that are, or are intended to be, licensed by the society at the completion of the facilities;
 - (iii) the rights and obligations of members of the society in relation to the facilities and the specified securities; and
 - (iv) the voting rights of the subscriber, as a member of the society, in respect of the specified securities (including a statement as to whether the rules provide for voting by classes of members, or by a representative, in relation to particular matters);
- (d) where a subscriber for specified securities is a new owner, that subscriber has, before subscription, received from the developer a document that sets out a description of —
 - (i) the areas of land on which the facilities are situated and the land that makes up the proposed development;
 - (ii) the facilities that are, or are intended to be, licensed by the society at the completion of the facilities;
 - (iii) the rights and obligations of members of the society in relation to the facilities and the specified securities;
 - (iv) the voting rights of the subscriber, as a member of the society, in respect of the specified securities (including a statement as to whether the rules provide for voting by classes of members, or by a representative, in relation to particular matters);
- (e) subscribers for specified securities have, before subscription, received from the developer a document that sets out—
 - (i) a statement as to when the facilities are expected to be completed and licensed to the society; and
 - (ii) the material risks of those facilities not being completed or licensed to the society within the time expected;
- (f) subscribers for specified securities have, before subscription, received from the developer a document including the following:

- (i) a description of all the fees, charges, and levies (including any special levies) that are, or may be, payable by members of the society, including:
 - A which categories of members are, or may be, liable for those fees, charges, and levies,
 - B if already determined, the amounts of the fees, charges, and levies, and when they must be paid (including frequency);
 - C if not already determined, the means and formula (if any) by which the amounts, and due dates (including frequency), of the fees, charges, and levies may be determined; and
 - D a reference to the provisions in the rules which provide for the fees, charges, and levies; and
- (ii) a statement of each of the fees, charges, and levies, previously paid by members, disclosing the purpose, amount, and frequency, of those fees, charges, and levies;
- (g) it is a term of the offer that the rules provide that the specified securities may be subscribed for by—
 - (i) in the case of a subscriber who is an existing owner, by completing an application form attached to an offer document offering the specified securities to that subscriber, which includes the terms of the securities including the condition relating to the member's encumbrance; or
 - (ii) in the case of a subscriber who will be a new owner, by entering into an sale agreement relating to that subscriber and to a developed property, which includes the terms of the specified securities including the condition relating to the member's encumbrance; or
 - (iii) in the case of a subscriber who will be a non-residential member, by completing an application form attached to an offer document offering the specified securities to that subscriber which includes the terms of the specified securities;
- (h) it is a term of the offer that the rules provide that only the following persons can be members of the society:
 - (i) incorporation members;
 - (ii) residential members; and
 - (iii) non-residential members, provided that the number of non-residential members does not exceed 25% of the total membership of the society at any time;
- (i) it is a term of the offer that the rules provide that incorporation members may continue as members of the society only for so long as is reasonably necessary to satisfy

- the membership requirements of the Incorporated Societies Act 1908;
- (j) it is a term of the offer that the rules provide that every owner of a developed property who has agreed to grant a member's encumbrance against that owner's developed property is entitled to be a member of the society;
 - (k) moneys paid by a subscriber for the specified securities are held, until such time as defined in (l) below, in any of the following trust accounts:
 - (i) a nominated trust account operated by a lawyer, an incorporated law firm, a conveyancing practitioner, or an incorporated conveyancing firm under the Lawyers and Conveyancers Act 2006; or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 2008;
 - (l) moneys paid by a subscriber for the specified securities must be held in the trust account specified in (k) until—
 - (i) all facilities that the society or the developer represents or agrees will be completed and licensed for use by the society, have been completed and either a code compliance certificate or a certificate of public use has been issued under the Building Act 2004 (as applicable), and those facilities have been licensed for use in accordance with that representation or agreement; and
 - (ii) the Agreement for Use, and any variation of the Agreement for Use, which must entitle members of the society to use the facilities for a term of fifty years from 1 October 2011, has been executed in favour of the society and had been provided to the society; and
 - (iii) the clubhouse encumbrance has been registered on the computer register for the land upon which the facilities are situated;
 - (m) no settlement of a sale agreement with a new owner is completed until—
 - (i) all facilities that the society or developer represents or agrees will be completed and licensed for use by the society at the time of settlement of the sale agreement, or at a future date, are completed, and either a code compliance certificate or a certificate of public use has been issued under the Building Act 2004 (as applicable) and those facilities have been licensed for use in accordance with that representation or agreement; and
 - (ii) the Agreement for Use, and any variation of the Agreement for Use, which must entitle members of the society to use the facilities for a term of fifty years from

- 1 October 2011, has been executed in favour of the society and had been provided to the society; and
- (iii) the clubhouse encumbrance has been registered on the computer register for the land upon which the facilities are situated;
 - (n) it is a term of the offer that the term of any membership granted cannot exceed the term of the Agreement for Use;
 - (o) it is a term of the offer that the rules provide that the society is only permitted to carry on one or more of the following activities:
 - (i) obtaining and maintaining a licence for the use of the facilities pursuant to the Agreement for Use;
 - (ii) issuing memberships to the society that confer rights on members to use the facilities, and administering and enforcing those memberships in accordance with the rules;
 - (iii) negotiating with the owner for the time being of the clubhouse land, discounts and privileges for members in relation to the facilities and discounts and privileges for members in relation to other facilities or services provided by, or under the control of, the owner for the time being of the clubhouse land;
 - (iv) managing and administering the society and administering and enforcing the rules; and
 - (v) any incidental activities that the society considers are beneficial for members of the society;
 - (p) it is a term of the offer that the rules provide—
 - (i) all moneys paid to the society by its members are applied only for one or more of the activities referred to in paragraph (o); and
 - (ii) members of the society have the right to use the facilities in accordance with the rules; and
 - (iii) members of the society have the right to vote at meetings of members of the society; and
 - (iv) on liquidation or winding up of the society, each member of the society has the right to share pro rata with all other members of the society in a distribution of any surplus assets of the society; and
 - (v) fees, charges, or levies payable to the society by its members to the extent that they have not been fixed under the rules are determined only by a resolution of the members, or of a committee of the members, passed in accordance with the rules; and
 - (vi) the society provides to a prospective or existing member of the society, within 5 working days after

- receiving a request, a copy of the most recent financial statements of the society; and
- (vii) financial statements of the society complying with the Financial Reporting Act 1993 are audited annually and are distributed to members of the society as soon as is reasonably practicable after each audit is completed and, in any event, no later than 5 months after the balance date of the society; and
- (q) the society does not have as objects –
- (i) the carrying on of trading activities; or
 - (ii) the carrying on of business for profit.

7 Certain conditions cease to apply if rules amended

- (1) After the completion and licensing of the facilities as described under clause 6(c)(ii) and 6(d)(ii), a condition in clause 6(o) and 6(p) ceases to apply if—
- (a) an amendment to the rules is approved by a special resolution passed by the members of the society (excluding the developer);
 - (b) the amendment results in the rules no longer complying with the conditions; and
 - (c) subscribers for the specified securities have, before subscription, received from the developer a statement that describes the procedure for amending the rules.
- (2) In this clause, special resolution means a resolution approved by a majority of 75% or, if a higher majority is required by the rules, that higher majority, of the votes of those members entitled to vote and voting on that question.

Dated at Wellington this 4 day of November 2011



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 5 November 2011 and expires on 31 October 2016, applies to participatory securities in the form of memberships in an incorporated society, that licenses facilities of a country club associated with a real property development.

The effect of the notice is that the developer and the society are exempted from the Securities Regulations 2009 (**Regulations**) (except regulation 23) and the following provisions of the Securities Act 1978 (**Act**):

- section 33(3), which relates to the appointment of a statutory supervisor;
- sections 37 and 37A, which contain the prospectus and investment statement requirements of the Act;
- section 38A, which relates to statements in advertisements by experts;
- section 54, which relates to certificates evidencing securities.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant these exemptions because:

- the securities exempted under this notice are memberships in a society which confer rights to use recreational facilities. While the memberships are securities in terms of the Act and Regulations, they are not investments in the usual sense. Rather the society is established as a vehicle through which members can use and enjoy communal facilities, as well as enabling governance and maintenance of those facilities;
- memberships may be offered to persons who own land inside Fairview Estate (residential members) as well as to a limited number of persons who do not own land in Fairview Estate (non-residential members). Memberships offered and allotted to non-residential members will be offered and allotted in reliance on the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 (**Charitable Notice**);
- as memberships offered and allotted to residential members require those persons to provide an encumbrance over their land, the offer to those residential members is not able to be made in reliance on the Charitable Notice. In these circumstances the securities are more akin to securities to which the Securities Act (Real Property Developments) Exemption Notice 2007 applies, being memberships



in a society to manage communal facilities, as part of a real property development. This notice provides exemptions on equivalent conditions to that class notice but tailored to the circumstances of the securities:

- this notice exempts the provision of information not material to subscribers' decision whilst the conditions of the notice require that potential subscribers receive material information about the membership and facilities to assist their decision whether to subscribe, including information about the encumbrance against their land and fees. The conditions also include requirements relating to membership entitlements, means of subscription, treatment of subscription money, settlement of agreements for sale and purchase of land, control of the facilities, activities permitted to be carried on by the society, and the rules of the society:
 - in these circumstances the scope of the exemptions and these conditions mean that the exemptions will not cause significant detriment to subscribers, and that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
-