

Securities Act (Tauranga Bridge Marina) Exemption Notice 2013

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 (Tauranga Bridge Marina) Exemption Notice 2013.
- 2 Commencement**
This notice comes into force on 16 December 2013
- 3 Revocation**
The notice is revoked on the close of 30 November 2016
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires:
Act means the Securities Act 1978
manager means Tauranga Bridge Marina Limited
marina operator means the manager
participatory securities means the remaining 190 marina berth

licences at Tauranga Bridge Marina issued by the manager under the scheme

Regulations means the Securities Regulations 2009

Tauranga Bridge Marina means the marina situated in Tauranga known as the Tauranga Bridge Marina

scheme means the scheme for ownership of rights and interests in Tauranga Bridge Marina

- (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 and 54 of the Act and the Regulations (except regulation 23) relating to participatory securities

The manager, and every person acting on its behalf, are exempted in the case of participatory securities, from —

- (a) section 33(3) of the Act; and
- (b) section 37 of the Act; and
- (c) section 37A of the Act; and
- (d) section 54 of the Act; and
- (e) the Regulations (except regulation 23).

6 Conditions of exemption in clause 5(a)

The exemption in clause 5(a) is subject to the conditions that:

- (a) it is a term of the offer that the manager must ensure that, within 5 months and 20 working days after the balance date of each of the scheme and the manager, audited financial statements for the scheme and the manager, that comply with the Financial Reporting Act 1993, together with a copy of the auditor's report on those financial statements are delivered to the Registrar for registration; and
- (b) it is a term of the offer that after allotment of the participatory securities within 1 month after the beginning of each financial year of the scheme, the manager must send, or cause to be sent, to the holders of participatory securities a written statement containing reasonable details of the actual and budgeted contributions required to be made by those holders to the operating and other expenses of the scheme during that financial year.

7 Conditions of exemptions in clause 5(b) to (e)

The exemptions in clause 5(b) to (e) are subject to the conditions that —

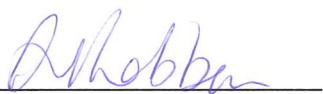
- (a) no allotment of participatory securities shall be made if a subscriber did not receive a disclosure document relating to the participatory securities;
- (b) the subscriber must receive evidence that the marina berth licence will record the name of the licence holder in relation to the particular marina berth subscribed for;
- (c) any disclosure document must:
 - (i) specify details of the marina facilities and the common areas available for the use by subscribers;
 - (ii) contain prominent statements to the effect that in respect of each financial year of the scheme:
 - A audited financial statements that comply with the Financial Reporting Act 1993 will be available for the scheme and the manager not later than 5 months and 20 working days after the end of each financial year of each of the scheme and the manager; and
 - B copies of the most recent audited financial statements for the scheme and the manager may be obtained by holders of the participatory securities, free of charge, on request at the place or places specified in the disclosure document;
 - (iii) specify the basis upon which, and by whom, the amount of any levies and contributions are determined;
 - (iv) specify the annual levies payable by holders of the participatory securities;
 - (v) specify whether or not the subscriber is entitled to any voting rights at meetings of the marina operator or of subscribers and, if the subscriber is entitled to exercise any voting rights:
 - A explains the circumstances in which, and matters on which, voting rights may be exercised by the subscriber;
 - B identifies, by class, the other parties entitled to exercise voting rights in such circumstances and on such matters;
 - C states whether or not the marina operator or any associate of the marina operator is or may be

- entitled to vote on such matters and, if so, indicates the likely aggregate proportion of votes exercisable by the marina operator and its associates on such matters;
- D states whether or not any decision on which the subscriber is entitled to vote is binding on the marina operator;
- (vi) contain or be accompanied by a copy of the licence for the marina berth granted by the scheme which the licence holder has exclusive use;
- (vii) contain a description of the rights and obligations (both actual and contingent) of a subscriber to use a marina berth and the facility (to the extent these are not set out in the licence for a marina berth) and otherwise in connection with the interest in the marina berth being offered;
- (viii) specify how the licence holder can transfer the licence and any restrictions on transferring the licence:
- (ix) contain the following information which would usually be required to be contained in a prospectus by Schedule 3 of the Regulations:
- A names and addresses of the manager and the directors of the manager;
- B a description and, if practicable, quantification of all liabilities (including potential and contingent liabilities) that a subscriber for an interest in a participatory security will or may incur;
- C details of any arrangements with, or entitlement to remuneration on the part of, the manager or promoter of the scheme or any associated person of either of them;
- D details of any other material matters;
- (x) contain a description of the amounts payable, the person to whom, and the manner in which, payments are to be made, the payment dates or frequency of those payments and the consequences of failing to make the payments.
- (xi) contain or be accompanied by the most recent statement of actual and budgeted contributions required to be made by subscribers to operating and other expenses;
- (xii) specify any rights, benefits or entitlements to which the subscriber will or may become entitled by reason of

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subscribing for an interest in the marina, other than the rights to use a dedicated marina berth and common facilities as provided for in the licence for a marina berth (including voting rights or rights to a share in residual assets on a winding up of the scheme or the marina operator).

Dated at Wellington this 13th day of December 2013.



Simone Robbers
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of Reasons

This notice comes into force on 16 December 2013. The notice is revoked on the close of 30 November 2016.

The notice exempts Tauranga Bridge Marina Limited (**the issuer**), subject to conditions, from the requirements under the Securities Act 1978 (**the Act**) to appoint a statutory supervisor, have a registered prospectus and provide an investment statement in respect of licences for marina berths at Tauranga Bridge Marina.

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 the exemptions set out in clauses 5 of the notice for the following reasons—

- the purpose of the scheme is to provide marina facilities, rather than to provide a conventional investment opportunity from which a return is expected. The subscriber is principally motivated by the ability to access and use a dedicated marina berth and associated common property at the marina facility:
- the marina is already constructed and so the costs of appointing a statutory supervisor would not be matched by the benefit to subscribers:
- conditions of the notice require that financial statements for the scheme and manager must be prepared and registered on a publically accessible register within 5 months and 20 working days of the end of each financial year of the scheme and security holders must be sent a

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statement of actual and budgeted contributions required from them for the forthcoming financial year. In these circumstances the appointment of a statutory supervisor to a role usually required for the on-going supervision of participatory securities would impose costs on the scheme not matched by the benefit to subscribers:

- subscribers will receive certain information about the offer before subscription so they have access to key relevant information on which to base their investment decision. This document will be an advertisement under the Act and therefore prohibited from containing untrue or misleading information about a material particular:

In the circumstances that the securities are ancillary to the ability to use the marina berth and therefore not a conventional investment, and the conditions of the exemptions which impose additional protections and require appropriate information to be disclosed to investors prior to the allotment of the securities, the Financial Markets Authority considers that the exemptions granted are not broader than reasonably necessary to address the matters that gave rise to the exemptions and will not cause significant detriment to subscribers in the scheme who are members of the public in New Zealand.
