



## **Securities Act (Belgrave First Management Limited and Covenant Trustee Company Limited) Exemption Notice 2006**

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 (Belgrave First Management Limited and Covenant Trustee Company Limited) Exemption Notice 2006.

### 2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

### 3 Expiry

This notice expires on the close of 31 October 2011.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**convertible security** means a debt security—

- (a) that is convertible into a unit in the trust; and
- (b) that is offered in conjunction with a unit in the trust

**manager** means Belgrave First Management Limited

**Regulations** means the Securities Regulations 1983

**trust** means the unit trust to be called the Belgrave First Mortgage Capital Insured Fund

**trustee** means Covenant Trustee Company Limited

**units** means units in the trust.

- (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 for manager and trustee from sections 33(2), 41, and 43 of Act

The manager, the trustee, and every person acting on behalf of either or both of them are exempted from—

- (a) section 33(2) of the Act in respect of convertible securities; and
- (b) sections 41 and 43 of the Act to the extent that those sections require a prospectus, or an amendment to a registered prospectus, for convertible securities to be

signed by the trustee as issuer or the trustee's directors as directors of the issuer.

**6 Exemptions for trustee from sections 37, 37A, 38A, and 51 to 54B of the Act and from Regulations**

The trustee and every person acting on its behalf (but not the manager) are exempted from sections 37, 37A, 38A, and 51 to 54B of the Act and from the Regulations in respect of convertible securities.

**7 Exemptions for manager from regulations 3 and 7A of Regulations and various provisions of Schedule 2 of Regulations**

The manager and every person acting on its behalf are exempted from—

- (a) regulations 3 and 7A of the Regulations to the extent that these provisions require disclosure of information in a registered prospectus or investment statement for the convertible securities about the trustee as issuer of those securities or about the trustee's directors as directors of the issuer; and
- (b) Schedule 2 of the Regulations, except clauses 1(2) to (4), 2, 4, 12 to 14, and 34, in respect of a registered prospectus for convertible securities.

**8 Conditions of exemptions in clauses 5 to 7**

The exemptions in clauses 5 to 7 are subject to the conditions that—

- (a) the trustee has been appointed trustee in respect of the convertible securities; and
- (b) the trust deed for the trust contains clauses equivalent to the clauses that are deemed by Schedule 5 of the Regulations to be included in trust deeds for debt securities; and
- (c) the manager and the trustee have signed the trust deed for the trust; and
- (d) the trust deed for the trust is lodged with the Registrar under section 9 of the Unit Trusts Act 1960; and
- (e) the convertible securities are issued pursuant to the trust deed for the trust; and

- (f) the registered prospectus and investment statement for the convertible securities both contain the following:
  - (i) a description of the effect of the exemption for the trustee; and
  - (ii) a statement that the disclosure obligations that the trustee would otherwise have except for the exemption in clause 6 have been undertaken by the manager; and
  - (iii) a statement that it is a term of the offer that the obligations the trustee would otherwise have, except for the exemption in clause 6, to keep a register of convertible securities and to permit access to this register under sections 51 and 52 of the Act have been undertaken by the manager; and
  - (iv) a statement that it is a term of the offer that the manager will send, or cause to be sent, to a holder of convertible securities at any time on request, and to each holder of convertible securities at least once every 6 months, a written statement that properly evidences the nature and ownership of the convertible securities of the holder.

## **9 Exemption for manager from section 37A(1)(c) of Act**

The manager and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of any units that are, or are to be, allotted under the terms of the convertible securities.

## **10 Conditions of exemption in clause 9**

The exemption in clause 9 is subject to the conditions that—

- (a) the convertible securities have been allotted under a registered prospectus that contains particulars of all material matters relating to the offer of the units to be allotted on conversion of the convertible securities; and
- (b) before allotment of the units on conversion of the convertible securities, the following documents have been sent to every person who was, at the time the documents were sent, a registered holder of the same class of

convertible securities in respect of which the units are allotted:

- (i) a copy of the trust's most recent audited financial statements that comply with the Financial Reporting Act 1993 and with the provisions of any other relevant enactments; and
- (ii) if the date of allotment of the units on conversion of the convertible securities would be later than 9 months after the date of the financial statements referred to in subparagraph (i), a copy of—
  - (A) interim financial statements for the period beginning on the day after the date of the financial statements referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date, that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements and with the provisions of any other relevant enactment (except that they need not be audited); and
  - (B) a statement containing a description of the trust; and
- (c) the date of allotment of the units on conversion of the convertible securities is not more than 9 months after the date of the financial statements or interim financial statements referred to in paragraph (b).

#### **11 Exemption for manager from section 54B(3)(b) of Act**

The manager and every person acting on its behalf are exempted from section 54B(3)(b) of the Act to the extent that it requires financial statements of the trustee as issuer of the convertible securities to be sent to any person on request.

#### **12 Exemption for manager from regulation 12(1) of Regulations**

The manager and every person acting on its behalf are exempted from regulation 12(1) of the Regulations in respect of convertible securities and units.

**13 Conditions of exemption in clause 12**

The exemption in clause 12 is subject to the conditions that—

- (a) any statement of assets or net assets of any person in any advertisement relating to the convertible securities is in respect of the trust; and
- (b) any statement of total assets of the trust in any advertisement relating to the convertible securities also states with equal prominence the total liabilities of the trust; and
- (c) any statement of financial position, statement of financial performance, and statement of cash flows for the trust contained in an advertisement relating to convertible securities is the same as the statement of financial position, statement of financial performance, and statement of cash flows for the trust contained in the registered prospectus; and
- (d) if the advertisement relating to the convertible securities contains an unaudited statement of financial position, unaudited statement of financial performance, or unaudited statement of cash flows for the trust, the advertisement states that those statements are unaudited.

Dated at Wellington this 10th day of October 2006.

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

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 October 2011, exempts the manager and the trustee of the Belgrave First Mortgage Capital Insured Fund (the **trust**), subject to conditions, from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 1983 in respect of debt securities that are convertible into units in a unit trust.

The Securities Commission considers that it is appropriate to grant this exemption because—

- securities that are convertible into units in a unit trust are debt securities issued by the unit trustee for the purposes of the Act. Practical compliance with the Act can create an extra layer of compliance activity and costs if the unit trustee of a unit trust is required to appoint a trustee for the debt securities; and
- the securities in this case are notes that are convertible at any time at the option of the manager of the trust. Accordingly, subscribers in the convertible notes appear to acquire a vested interest in the property of the trust. As such, the Commission considers that the notes confer rights falling within the definition of **unit** in section 2(1) of the Act. The Commission considers it preferable to grant an exemption under which the issuer's disclosure obligations are discharged by the manager of the trust, on conditions that require the unit trustee to act as trustee of the debt securities; and
- the exemption from disclosure upon conversion is consistent with previous exemption notice precedents and requires all material matters about the underlying units to be disclosed at the time of the offer of the convertible securities.

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

Date of notification in *Gazette*: 12 October 2006.

This notice is administered by the Securities Commission.

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