



Securities Act (Contributory Mortgage Brokers) Exemption Amendment Notice 2007

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 (Contributory Mortgage Brokers) Exemption Amendment Notice 2007.
- 2 Commencement**

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

This notice amends the Securities Act (Contributory Mortgage Brokers) Exemption Notice 1983.

4 New clause 1A

The following clause is inserted after clause 1:

“1A Expiry

This notice expires on the close of 30 September 2012.”

5 Interpretation

The definition of **Guarantor** in clause 2 is revoked and the following definition substituted:

“**guarantor**, in relation to an interest in a contributory mortgage, means a person who—

- “(a) is unconditionally liable (whether or not jointly or severally with the contributory mortgage broker or any other person) to repay the securities; or
- “(b) is liable to repay the securities subject only to the condition that the contributory mortgage broker or any other person has failed to do so; or
- “(c) is unconditionally liable (whether or not jointly or severally with the mortgagor under the mortgage or any other person) to repay the principal, interest, or any other amount secured by the mortgage; or
- “(d) is liable to repay the principal, interest, or any other amount secured by the mortgage subject only to the condition that the mortgagor under the mortgage or any other person has failed to do so”.

6 Contributory mortgage brokers exempted from compliance with regulation 12 of the Securities Regulations 1983

Clause 3(2) is amended by revoking paragraph (a) and substituting the following paragraph:

- “(a) state the amount of assets or net assets of any person or persons, other than either or both of the following:
 - “(i) the total assets or net assets of the mortgagor or the guarantor;
 - “(ii) an amount of assets that is required to be disclosed to a contributor under the Securities Act (Contributory Mortgage) Regulations 1988; or”.

Dated at Wellington this 4th day of September 2007.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (Contributory Mortgage Brokers) Exemption Notice 1983 (the **principal notice**) by—

- inserting an expiry clause providing for the principal notice to expire on 30 September 2012; and
- clarifying that the definition of guarantor includes both a guarantor in relation to the amounts owing under a contributory mortgage and a guarantor in relation to the obligation to repay the securities; and
- clarifying that an advertisement that relates to an offer of an interest in a contributory mortgage may include information that must be disclosed to contributors under the Securities Act (Contributory Mortgage) Regulations 1988 (the **Contributory Mortgage Regulations**).

The Securities Commission considers that the amendments are appropriate because—

- it is the Commission's policy to review all exemption notices every 5 years, and accordingly an expiry date has been inserted;
- regulation 12 of the Securities Regulations 1983 sets out the statements about assets that may be made in any advertisement relating to securities. In relation to advertisements about securities that are interests in a contributory mortgage, those statements may be made only in relation to the assets of a mortgagor under a contributory mortgage or a guarantor of those securities. The definition of the term guarantor in those

regulations excludes an issuer of the securities, which in respect of interests in a contributory mortgage is the contributory mortgage broker. Accordingly, statements about the assets of a contributory mortgage broker may not be made in any advertisement about securities that are interests in a contributory mortgage, even if the contributory mortgage broker is the guarantor of those securities. The principal notice is intended to allow a contributory mortgage broker that is also a guarantor of the interests in a contributory mortgage to make statements about its assets in an advertisement about those securities in the manner consistent with the statements required by regulation 12 of the Securities Regulations 1983:

- the amendments clarify ambiguities in the principal notice as to the nature of the guarantee provided by a guarantor. Without the amendment, it is unclear whether statements may be made about the assets of a guarantor of the obligations of the contributory mortgage broker or another person in relation to the interests in a contributory mortgage, as compared solely to statements about the assets of a guarantor of the obligations of the mortgagor to repay the loan for which a mortgage of land was granted. The amendment clarifies and extends the definition of guarantor in the principal notice so that it will apply in both situations:
- the amendments resolve an apparent conflict between the principal notice and the Contributory Mortgage Regulations. Consistent with regulation 12(1)(a) of the Securities Regulations 1983, the principal notice provides, among other things, that no advertisement may state the amount of the assets or net assets of any person or persons, other than the total assets or net assets of the mortgagor or the guarantor. However, the Contributory Mortgage Regulations require the value of certain assets to be stated in valuation reports provided to contributors. The amendment clarifies that those values may be stated in an advertisement in respect of an interest in a contributory mortgage, as well as any other statement about assets required by the Contributory Mortgage Regulations.

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

Date of notification in *Gazette*: 6 September 2007.

This notice is administered by the Securities Commission.
